

No. 15003

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL No. 12, AFL,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of The National Labor
Relations Board

FILED

APR - 2 1956

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Washington, D. C.

Case No. 21-CB-564

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL No. 12, AFL, and
ROBERT A. HOLDERBY, An Individual.

Case No. 21-CB-536

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL No. 12, AFL, and
FREDERICK R. HUMMEL, An Individual.¹

Case No. 21-CB-586

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL No. 12, AFL, and
HOYT COVERT, An Individual.

INTERMEDIATE REPORT

Dan Grodsky, Esq., for the General Counsel.

Robert A. Holderby, of Los Angeles, California,
pro se.

David Sokol, Esq., and Mr. H. M. McNeel, of Los
Angeles, California, for the Respondent.

Before: Thomas S. Wilson, Trial Examiner.

Statement of the Case

Upon charges duly filed by Frederick R. Hummel
on November 16, 1953; by Robert A. Holderby on

¹ As Hummel did not appear as a witness and as
no evidence was presented on his behalf, the under-
signed will recommend that this complaint be dis-
missed as to him.

February 15, 1954; and by Hoyt Covert on April 8, 1954, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued a complaint against International Union of Operating Engineers, Local No. 12, AFL, herein called the Respondent, or Local 12, alleging that the Respondent was engaged in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and (2), of the Act and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges, consolidated complaint, amendment to the consolidated complaint and notice of hearing were duly served upon the Respondent.

With respect to the unfair labor practices, the complaint alleged, in substance, that: (1) the Respondent was operating a hiring hall in a manner discriminatory to nonmembers of the Respondent; (2) Respondent had discriminatorially refused to dispatch one Robert A. Holderby because of his nonmembership in the Respondent; and (3) the Respondent, by the acts of its agent Smallwood, attempted to cause an employer, United Concrete Pipe Corporation, to discriminate against an employee, Hoyt Covert, all in violation of Section 8 (b) (1) (A) and (2) and Section 2 (6) and (7) of the Act. By its answers duly filed, Respondent denied the commission of any unfair labor practice.

Pursuant to notice, a hearing was held at Los Angeles, California, on October 18-19, 1954, before

the undersigned, at which hearing the General Counsel, the Respondent and Holderby were represented by counsel or in person. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to present oral argument and briefs was afforded all parties. On November 10, 1954, the General Counsel and the Respondent filed briefs.

From observation of the witnesses, and upon the entire record in the case, the undersigned makes the following:

Findings of Fact

I. The business of the Companies

The complaint alleged, and the answer denied, that:

2. The Associated General Contractors of America,² herein called the Association, is composed of building and construction contractors, herein called its members, located in, and doing business in all states of the United States, and exists in part to negotiate contracts with and conduct labor relations for its members with labor organizations, including Respondent.

3. The aggregate business of members of the Association exceeds \$100,000,000 annually, and includes work on manufacturing and industrial structures and national defense installations valued in excess of \$100,000,000 annually. Members of the Association annually perform services outside the

² Referred to herein as AGC or Association.

state wherein their individual primary operations are located valued at in excess of \$50,000,000.

To prove these allegations the parties stipulated that the testimony of William E. Coombes given in Case No. 21-CB-548 be considered a part of the record in the instant case.

The stipulated testimony showed that Ford J. Twaits Company was in 1953 and 1954 a member of the Associated General Contractors and was the sponsor of a joint venture with Morrison-Knudsen Company, Inc., and Macco Corporation which was awarded some six contracts for several million dollars' worth of construction at a Marine training base at Twenty-Nine Palms, California, for the United States Navy. This testimony also showed that Ford J. Twaits Company and Morrison-Knudsen Company, Inc., also performed work at Nellis Air Force Base near Las Vegas, Nevada, which when completed would amount to between ten and eleven million dollars. This testimony further indicated that Morrison-Knudsen Company, Inc., was also engaged on an airport construction job near New Orleans, Louisiana, and that it was "generally well known in the trade that Morrison-Knudsen Company is one of the largest construction companies in the world and they are doing business in practically every state, if not all the states from time to time."

Although there is neither allegation nor proof that a single dollar's worth of goods or materials crossed State lines for any of the above projects,

two of the projects apparently concern the defense of the country and are in a sum in excess of the \$100,000 now required by the Board's new jurisdictional standards so that therefore, under these standards, AGC is engaged in commerce within the meaning of the Act.

By amendment dated August 11, 1954, the General Counsel added paragraph 12 (a) to his complaint which read as follows:

The Respondent, by the acts of its agent Smallwood, at a date not certain but believed to be late in February or early in March, 1954, attempted to cause an employer, United Concrete Pipe Corporation, to discriminate against an employee, Hoyt Covert, in violation of Section 8(a) (3).

There is no allegation in the complaint nor proof in the testimony that United Concrete Pipe Corporation was either individually engaged in commerce or was a member of the Associated General Contractors. The undersigned must, therefore, find that said Employer was not engaged in commerce within the meaning of Section 2 (6) and (7) of the Act. Although the unfair labor practice alleged was otherwise clearly proven in the actions of agent Smallwood, the evidence proves that this was a single, isolated incident, and that it would not effectuate the policies of the Act to issue a cease and desist order on this alone. With the above caveat, the undersigned will recommend that the complaint be dismissed as regards to employee Hoyt Covert.

II. The Respondent

International Union of Operating Engineers, Local No. 12, AFL, is a labor organization admitting to membership employees of the members of the Associated General Contractors.

III. The alleged unfair labor practices

1. The Hiring Hall.

In the complaint, the evidence and during oral argument the General Counsel appeared to be contending that the entire hiring hall procedure set up by the Respondent in accordance with the terms of its contract with AGC was illegal but in his brief the General Counsel states: "The General Counsel is not attacking the agreement under which the Respondent's hiring hall has been set up. The attack is solely centered upon the operation of the hiring hall." At the conclusion of the testimony the undersigned expressed bewilderment as to the theory upon which the General Counsel was proceeding in this matter. The concession above has not removed that bewilderment.

The agreement in effect between the Respondent and AGC at all times material here, and with some minor changes still in effect in the current contract between the two, provided as follows regarding the hiring of employees:

II.

A. That the Contractors hereby recognize the Unions who are signatory hereto as the sole and exclusive collective bargaining representative of all employees of the Contractors signatory hereto over

whom the Unions have jurisdiction, as such jurisdiction is defined by the Building and Construction Trades Department of the American Federation of Labor as of the date of this Agreement. * * *

That subject to this understanding the Contractors shall have entire freedom of selectivity in hiring and may discharge any employee for any cause which he may deem sufficient, provided there shall be no discrimination on the part of the Contractors against an employee, nor shall any such employee be discharged by reason of any Union activity nor interfering with the proper performance of this work.

It is the intention of the parties that all workmen covered hereby shall be or become forthwith upon employment and remain continuously, members in good standing of the International Unions signatory hereto through their affiliated Local Unions having work and area jurisdiction and on whose behalf this Agreement is executed, as a condition of employment, and that this provision shall become operative without further notice or amendment whenever amendments to or judicial interpretations of the Labor-Management Relations Act of 1947 remove the inhibitions against the application of this paragraph now existing under the present wording and judicial interpretations of that Act.

It is agreed that all workmen covered hereby shall be or become, not more than thirty (30) days after employment and remain continuously, members in good standing of the International Unions

signatory hereto through their affiliated Local Unions having work and area jurisdiction and on whose behalf this Agreement is executed, and shall remain available for work as a condition of employment.

B. That in the employment of workmen for all work covered by this Agreement in the territory above described, the following provisions, subject to the conditions of Article II-A, above, shall govern:

1. That the Local Unions shall establish and maintain open and nondiscriminatory employment lists for employment of workmen in the work and area jurisdiction of each respective Local Union of each particular trade.

That the Contractors shall first call upon the respective Local Unions having work and area jurisdiction, or their Agents, for such men as they may from time to time need, and the respective Local Unions, or their Agents, shall immediately furnish to the Contractors the required number of qualified and competent workmen and skilled mechanics of the classifications needed by the Contractors.

That the respective Local Unions, or their Agents, will furnish each such required competent workmen or skilled mechanic entered on their lists, to the Contractors by use of a written referral and will furnish such workmen or skilled mechanics from the respective Local Unions' listing in the following manner:

(a) Workmen who have been recently laid off or terminated in that respective Local Union's work

and area jurisdiction by the Contractors now desiring to re-employ the same workmen in that same area provided they are available for employment.

(b) Workmen who have been employed by Contractors in the respective Local Union's work and area jurisdiction within the multiple-employer unit during the previous ten (10) years, and are available for employment.

(c) Workmen whose names are entered on the list of the respective Local Union having work and area jurisdiction and who are available for employment.

* * * * *

That workmen employed by the Contractors for a period of thirty (30) days continuously or accumulatively within the multiple-employer unit and procured in accordance with II, B-1, (c), above or procured full other sources by the Contractors themselves, shall become members of the appropriate craft Union signatory hereto immediately upon terms and qualifications not more burdensome than those applicable at such times to other applicants to such Union.

Based upon this contract the Respondent established a hiring hall procedure in order to supply the manpower requirements of various members of AGC who would telephone those requests into the Union as they arose. These telephone calls are taken by secretaries in the Union's dispatcher's office. Upon receipt of such requests these secretaries refer to the Union's out-of-work rolls and from

those rolls secure a man with the qualifications requested and dispatch him with a union referral paper to the requesting contractor.³ During the times material here, these out-of-work lists were made up weekly in the union office and consisted of two groupings respectively headed "Members" and "Transfers and Others." Listed under the heading of "Members" were those members of Local 12 who had reported by telephone or otherwise that they were out of employment and seeking work. Under the other heading were listed union members from other locals who had transferred into the jurisdictional area of Local 12 and any other workman who reported himself at the union office and filled out an information card giving the usual employment data, to wit, name, address, telephone number, local number, social security number, whether applicant for employment was a member or applicant for membership in the Union, work capabilities and last employment.

A 3-inch by 5-inch work card was made for each union member and those for unemployed members were placed upon a wheel, a frame index upon which these cards could be attached. These work cards contained the member's name, social security number, work classification and capabilities. Upon these cards notations were made as to each job to which the man was referred, the date upon which he reported himself unemployed, and various tele-

³ Occasionally the employee is dispatched without the referral which is thereafter mailed to the employer.

phone or personal contacts or attempted contacts and other pertinent information regarding employment. These cards are kept on the wheel in order as of the time each individual reported himself unemployed.

The information cards required to be filled out by "applicants and others" were kept in ordinary box files.

When an employer telephoned into the union hiring hall for a man having a certain job capacity, the secretary would go to the wheel where the work records of the members were kept in the order of the time the man reported himself available for work and would select therefrom the first card of a man having the requisite capacity and dispatch him, if available, to the job. If that man were not available for any reason, the next man on the wheel having the requisite classification would be dispatched. As there are many classifications of workmen in this field, the man selected might well not be the one whose card was number 1 on the wheel for that individual might well not have the qualification requested. In other words, the man whose card was number 1 on the wheel might be qualified to operate a caterpillar while the request might have been for a crane operator. Hence the secretary would have to go down the wheel until she finally located the first crane operator who was out of work and he would be dispatched. Conceivably this card might be the very last card on the wheel but still be the first card of a man having the qualifications sought.

In the event that there happened to be no unemployed member in the classification requested, then the secretary would turn to the files of the "Applicants and Others" for a qualified individual. If located in this file, the secretary would dispatch such individual to the job with a union job referral. Such an individual dispatched would be required to pay a fee of \$2.50 per week for each *work* he worked upon the the job to which he was dispatched. Oftentimes, such individual *work* at the time of referral make application to join Local 12 although this was not a universal practice, according to the only evidence given at the hearing. Of course, such individual would be required to make application and join the Union after holding the particular job for 30 days in accordance with union-security provision of the contract between the Union and the AGC, if the contractor was a member of AGC, or in accordance with whatever contract was in force between the Union and the contractor involved.

From his brief it appears that the only attack which the General Counsel now makes against the hiring hall was "the practice" of having the "Applicants and Others" execute an application for membership at the union office at the time he picked up his first referral to a job. Of course under the Act such an employee had 30 days in which to file such an application for membership. This was so under the agreements with the employers. However there is no thing in the Act which deprives an employee of the right to apply for membership prior to the expiration of that 30-day period if he so

desires. The fact that it was the "practice" to have such an employee sign an application for membership at the time of his first referral is not proof that the signing of such an application for membership was a condition precedent to the securing of the referral—which, if true, would be definitely a violation of the Act. However there is no showing in this case of any such illegal requirement. Nor is there any showing here that this signing was not with the individual employee's consent and for his individual convenience. Especially is this true in view of the testimony of a union official that he knew of men dispatched to jobs without having paid a "dime" to the Union, although apparently there was also a "practice" to have the employee pay a part of his initiation fee at the time of the referral. That practice also may well have been for the material convenience of the man as well as the Union. In the absence of proof that the making of an application for membership and the payment of all or a part of the fee was a condition precedent to the referral to the job, the undersigned would be guessing and conjecturing if he held such an indefinite "practice" to be violative of the Act. Under the law the undersigned is prohibited from accepting suspicion and conjecture in the absence of proof. The undersigned, therefore, on this record must hold that the hiring hall and practice thereunder were legal under the Act.

Originally the General Counsel appeared to contend that the existence of the two categories of un-

employed, i.e. the "Members" and the "Applicants and Others," constituted discrimination under the Act. As noted above this contention now seems to have been dropped. The two categories of unemployed workmen appears to be fully justified by Section II, B (b) which gives secondary preference in referral to: "Workmen who have been employed by contractors in the respective Local Union's work and area jurisdiction within the multiple-employer unit during the previous ten (10) years, and are available for employment." As the contract required that all employees become members of the Union within 30 days of their employment by AGC contractors, it is clear that only members of Local 12 would have worked for the AGC contractors in the past 10 years. It is equally obvious that transfers from other local unions outside the jurisdiction of Local 12 and new applicants for work would not have worked for the AGC contractors during the past 10 years and, hence, would not qualify for preference under this section of the contract. As the General Counsel has renounced his intention to attack the contract upon which the hiring hall is based, it seems clear that he is in fact acknowledging the legality of the preference set up in the contract. In this the undersigned agrees with the General Counsel.

Thus it appears that the hiring hall and the procedures set up under the contract between the Respondent and the AGC are legal and permissible under the Act.

2. Robert A. Holderby.

(a) The facts.

Holderby became a member of the Union in November 1952, and was thereafter referred by Respondent for work to numerous contractors in the Los Angeles area. Almost without exception these jobs were of short duration with the longest being for a period of about six weeks.

During the winter of 1952, Holderby became delinquent in the payment of his dues and, as a result, he was suspended from membership in January 1953. Subsequently he made arrangements to obtain reinstatement and on March 18, 1953, received the following letter from the Union:

(Letterhead of International Union of Operating
Engineers Local Union No. 12)

"Mr. Robert A. Holderby,
817 South Hobart, Los Angeles, California

Dear Sir and Brother:

March 17, 1953

Please be advised that your case was referred to the District Advisory Board of District No. 1 at its meeting on February 27, 1953 and it was the recommendation of the Advisory Board, that you be granted the privilege of Reinstating your membership by the payment of back Per Capita tax, Reinstatement Fee of \$5.00 dues for the current month, and three months dues in advance.

Our records show that your last dues were paid through the month of October, 1952 and that you were reported as no longer in good standing as of

January 31, 1953. This action was taken in accordance with provisions contained in the Constitution of our International Union, which states that members whose dues are two months in arrears are no longer in good standing.

The following amounts are therefore required for you to Reinstate your membership:

Per Capita tax—November-December 1952	\$ 2.00
Per Capita tax—January-February 1953..	2.00
Reinstatement Fee	5.00
Current month's dues	5.00
Three months' dues in advance.....	15.00
	<hr/>
Total	\$29.00
Less Payment to Date.....	10.00
	<hr/>
Balance	\$19.00

The above-mentioned consideration has been granted to you contingent upon your submitting a reinstatement from your doctor substantiating your illness during the last few months of 1952. It will be necessary therefore that you submit a doctor's statement before your Reinstatement can be accepted on the above-mentioned terms.

Kindly give this matter your immediate attention.

Fraternally yours,

/s/ Wm. C. Carroll, Financial Secy.,
I.U.O.E., Local Union No. 12"

WCC:RLM;sa

However, after paying the required reinstatement fees to Respondent as shown in the above letter, the Union under date of June 9, 1953, sent Holderby the following letter:

(Letterhead of International Union of Operating Engineers, Local Union No. 12)

“Registered

Return Receipt Requested

June 8, 1953

Mr. Robert A. Holderby
3198 West 7th Street
Los Angeles, California

Dear Mr. Holderby:

The Executive Board of Local Union No. 12 at its meeting on June 6, 1953, rescinded all previous action pertaining to your application and reinstatement into Local Union No. 12, International Union of Operating Engineers, and by action properly taken rejected your application for reinstatement and ordered that all monies paid by you to this Local Union be returned.

By this order, I am enclosing herewith a check in the amount of one Hundred Thirty-eight Dollars and Sixty Cents (\$138.60), which indicates the total amount paid in by you in Initiation Fee, Dues, Permits, etc.

Very truly yours,

/s/ P. A. Judd, Rec.-Corres. Secy.

I.U.O.E., Local Union No. 12”

PAJ;aw—Encls.

During this whole period of time, including that while suspended, Holderby was being referred to jobs regularly. However, on his record card which was on the unemployed wheel there appears the following notation of four lines:

6-9-53 Per Carroll
Money refunded
No longer a member
to be cleared

And under date of 6-25-53:

to be kept on
list per Mr. Bronson.

On June 9, 1953, Holderby had been referred to and was operating equipment belonging to C. J. Payne for the County of Los Angeles. He remained on that job, according to his own testimony, for a period of approximately 15 days. The union record for this period, however, shows the following:

6- 9-53—C. J. Payne (Roller Opr.)
6- 9-53—R. I. [reported in as unemployed]
7- 8-53—R. A. Watson (Oil on N. W. Crane)
7- 9-53 — Job Cancelled (contractor contacting Holderby)
7-14-53—R. I. [reported in as unemployed]
8- 8-53—NHL M. [not home, left message]
8-20-53—NHL M. [not home, left message]
8-20-53—Co. 2:30 p.m. [called office]

The union record, which Holderby acknowledged was, with the one exception noted above, accurate, contains no further notations until April 6, 1954, when there is a notation indicating that Holderby called the office wanting "booth th. no."

The undisputed evidence of Holderby shows that on the weekly out-of-work list published by the Union after June 8, 1953, Holderby's name was moved from the category of "Members" to the top of the category of "Applicants and Others" where it has remained at all times subsequent thereto.

Sometime after June 8, 1953, Holderby brought suit in the Superior Court of the State of California in and for the County of Los Angeles for a declaratory judgment against the Union to have: (1) his ouster from Local 12 declared "void and absolutely without legal effect," (2) to secure an order upon Local 12 to reinstate him as a member in good standing with full rights and privileges as such, and (3) for his actual damages suffered by reason of his unemployment subsequent to June 8, 1953.

The minutes of the Court, dated February 3, 1954, in the above suit show:

In cause submitted 12/16/53, Judg. as follows: Defendants are ordered to reinstate the plaintiff forthwith; Judgment for plaintiff in sum of \$700 damages, and in addition, \$125.00 per mo. until such time as plff. is reinstated. Plff's. attorney directed to prepare Findings & Judgment.

This case is now on appeal.

The remainder of Holderby's work record from the union work card up to the time of the hearing was as follows:

Robert Holderby No. 557-28-7861

8-20-53—Ca 2:30

4- 6-54—Ca Wanted booth ph. no.

- 4- 8-54—Gave new phone no.
- 4- 9-54—Wants to oil
- 5- 4-54—Checked phone no.
- 5-20-54—8:50 a.m. By.
- 5-24-54—By. 10:15 a.m.
- 5-24-54—In hall no. transp.
- 6- 3-54—Job on Barber Green
Too. far 1:30 p.m.
- 6- 3-54—Ball & Harms (W. Wheel 10 oper),
- 6-14-54—R. I. 8:05 a.m.
- 6-14-54—Gone new ph. no.
- 6-16-54—Ca gave new phone no.
- 6-16-54—Ca. 4:30 p.m.
- 6-18-54—Ca. 10:10 a.m.
- 6-18-54—Ca
- 6-18-54—Macco (Monitaowac oiler)
- 7-14-54—R. I. 2:30 P. M.
- 7-22-54—McDonald & Kruze
- 7-22-54—Ca 12:40 pm
- 8-13-54—R. I. 2:00 p.m.
- 8-16-54—Gave new phone no.
- 8-19-54—Schroeder Co. Screed opr.
- 8-24-54—R.I.
- 8-24-54—Refused concrete finishing job
Too far
- 8-26-54—Ca. 12:00
- 8-26-54—Osborne—Roller Oper.
- 9-28-54—R. I. 12:25 P.M.
- 10- 7-54—In hall 2:30 p.m.
- 10-11-54—In Hall

The testimony of Holderby also shows that between August 1953, and the first part of December

1953, he was employed as an automobile truck salesman by Courtesy Chevrolet Company and then following his dismissal by that company, by Midway Motors. Although this testimony raised the question of Holderby's availability for work out of Local 12, he testified that he was always available and further testified without contradiction that he did not turn down any referrals from the Union during this period of time as he was, in fact, anxious for the work. During this same period of time Holderby was also active in soliciting members in an organization called "Democracy for Labor Unions" which was an avocation without remuneration, according to Holderby.

Holderby also testified that he made efforts to obtain jobs in the construction industry by personal application to various contractors but was informed on each occasion that there was "not much work right now" or "no work."

(b) Conclusions

Counsel for the Respondent points out that "there is no showing in the testimony that there was any jobs available that Holderby might have filled which he did not obtain because of any failure of the Union to properly refer him out * * *" General Counsel attempts to answer this contention, originally raised during oral argument at the hearing, by contention that because of Holderby's work record on numerous jobs from July 14, 1952, through June 1953, "accordingly, it stands to reason that from the period of July 1953, to June 1954, cer-

tainly some jobs must have become available to which he should have been referred but was not." General Counsel also sees confirmation of this contention in:

Holderby's uncontradicted testimony is that he was always available for employment and indeed sat around the hall for months looking for jobs. This testimony is all the more impressive when his 1954 record is examined. Thus, for no apparent reason, and two days after the issuance of the complaint herein he is suddenly referred to a job for the first time in 11 months and is thereafter kept at work with the same general degree of frequency as he had been prior to his expulsion from the Union, while his name remains on the same list, i.e., the "Applicants and Others" list. Then, when it becomes apparent that he will not drop the charge but will continue the case, the supply of jobs is shut off just as abruptly as it was started. There is no evidence that jobs suddenly became more available in June, that jobs had not been available all along and the inference is unmistakable that his referrals to jobs was not based upon his location on the list without regard to other factors.

This inference is not as "unmistakable" as the General Counsel sees it because Holderby himself testified that, in addition to seeking work futilely from numerous employment agencies, he also sought work from a number of contractors individually during this same period and was told without exception "no work" or "not much work right now." He was unable to secure employment in the con-

struction industry even though the contractors had the right to request an employee by name. Holderby's own testimony made it clear that there was little work available in the construction industry around Los Angeles during the period he was supposedly available for work. In view of his employment by two motor companies, his availability for work in the construction industry becomes, at least, questionable. Holderby also acknowledged that he had been discharged by several contractors which might well have restricted the job opportunities for him. Nor does the work record after April 1954 appear to justify Holderby's claim of availability for he appears to have become quite particular about the referrals he would accept for it is to be noted that some referrals were refused by him as being "too far" or because of a lack of sufficient transportation. The record seems to indicate something less than anxiety for employment on the part of Holderby.

Upon the fundamental question of whether it is incumbent upon the General Counsel to show the availability of employment for which the claimant was qualified and a refusal to refer him thereto, it would seem that such a showing would be fundamental element in proving discriminatory treatment. Certainly, if during this period of time there was no work for which Holderby was qualified, then there could be no discriminatory treatment as to him merely because he was not employed during that period. In other words, if there were no jobs available, there could be no referrals.

Thus, in order to prove discriminatory treatment as to Holderby, it was incumbent upon the General Counsel to prove that there were jobs available for employees with Holderby's capabilities and, further, that he, Holderby, was not referred to those jobs. In the absence of such proof, the undersigned is left with nothing but suspicion and may guess and conjecture but is prevented by the law from making any finding of discriminatory treatment in the absence of proof of available work.

It is true, as the General Counsel points out, that the weekly out-of-work lists had been destroyed by the Union which, of course, might increase the difficulties of proof, but, as there was no showing that this destruction had anything whatsoever to do with the claim of Holderby, certainly this destruction would not, and should not, eliminate the necessity for the proof of an essential element of the cause of action set forth in the complaint. The undersigned must, therefore, recommend that the complaint as to Holderby be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Union of Operating Engineers, Local No. 12, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
2. The Respondent has not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the complaint against International Union of Operating Engineers, Local No. 12, AFL, be dismissed in its entirety.

Dated at Washington, D. C., this 14 day of December, 1954.

/s/ THOMAS S. WILSON,
Trial Examiner

Affidavit of Service and Postal Return Receipts attached.

United States of America

Before The National Labor Relations Board

Case No. 21-CB-564—I.U.O.E., Local No. 12, AFL,
and Robert A. Holderby, An Individual.

Case No. 21-CB-536—I.U.O.E., Local No. 12, AFL,
and Frederick R. Hummel, An Individual.

Case No. 21-CB-586—I.U.O.E., Local No. 12, AFL,
and Hoyt Covert, An Individual.

DECISION AND ORDER

Statement of the Case

Upon charges filed by Frederick R. Hummel, Robert A. Holderby, and Hoyt Covert, on November 16, 1953, February 15, 1954 and April 8, 1954,

respectively, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Twenty-First Region (Los Angeles, California), issued a complaint dated June 1, 1954, and an amendment thereto, dated August 11, 1954, against International Union of Operating Engineers, Local No. 12, AFL, herein called the Respondent, the Union, or Local 12, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Copies of the charges, the consolidated complaint and amendment thereto, together with notice of hearing were duly served upon the Respondent and the charging parties.

The amended complaint alleged in substance that the Respondent had violated Section 8 (b) (1) (A) and (2) of the Act by the following conduct: (1) refusing to refer Robert A. Holderby to a job with any employer-member of Associated General Contractors, Southern California Chapter; (2) operating its job dispatch system in a discriminatory manner by (a) giving preference in referrals to its members, (b) requiring nonmembers dispatched to jobs to pay work permit fees of \$2.50 per week, and (c) requiring nonmembers to pay a substantial part of the union initiation fee and advance dues at the time of their first dispatch to a job; and (3) attempting to cause an employer, United Concrete Pipe Corporation, to discriminate against Hoyt

Covert, one of its employees, in violation of Section 8 (a) (3) of the Act. On June 18 and September 7, 1954, the Respondent filed answers to the consolidated complaint and to the amended complaint, respectively, denying all the principal allegations.

Pursuant to notice, a consolidated hearing was held in Los Angeles, California, on October 18 and 19, 1954, before Thomas S. Wilson, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the close of the hearing, the parties argued orally before the Trial Examiner and subsequently filed briefs with him. During the course of the hearing, the Trial Examiner made rulings on motions and on the admissibility of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On December 14, 1954, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties. In the Intermediate Report the Trial Examiner found that the Respondent had not engaged in any unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act, and recommended that the complaint be dismissed in its entirety.

Thereafter, the General Counsel filed exceptions

to the Intermediate Report¹ and a supporting brief. The Respondent filed a brief in support of the Intermediate Report.

The Board has considered all the exceptions and, to the extent indicated hereinafter, finds them to have merit. Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The business of the Associated General Contractors

The General Counsel and the Respondent stipulated at the hearing that the testimony in Case No. 21-CB-548, Local 1400, United Brotherhood of Carpenters and Joiners of America, AFL, with respect to the business of Associated General Contractors, referred to herein as AGC, be considered a part of the record in the instant case. The testimony indicates that in 1953 and 1954, AGC members did several million dollars worth of construction work at a Marine training base at Twenty-nine Palms, California, and at an Air Force base near Las Vegas, Nevada.

We find that AGC is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.²

¹ The General Counsel did not except to the Trial Examiner's recommendation that the complaint be dismissed insofar as it applied to Hummel and Covert. The Board therefore adopts these recommendations without passing on the merits.

² Maytag Aircraft Corp., 110 NLRB No. 70.

II. The labor organization involved

International Union of Operating Engineers, Local No. 12, AFL, is a labor organization admitting to membership employees of members of Associated General Contractors.

III. The alleged unfair labor practices

A. The bargaining agreement.

For many years, the Respondent together with other construction trade unions have been parties to collective bargaining agreements with AGC. At all times material herein, the bargaining contract between these parties contained the following hiring provisions:

II.

A. That the Contractors hereby recognize the Unions who are signatory hereto as the sole and exclusive collective bargaining representative of all employees of the Contractors signatory hereto over whom the Unions have jurisdiction, as such jurisdiction is defined by the Building and Construction Trades Department of the American Federation of Labor as of the date of this Agreement. * * *

That subject to this understanding the Contractors shall have entire freedom of selectivity in hiring and may discharge any employee for any cause which he may deem sufficient, provided there shall be no discrimination on the part of the Contractors against an employee, nor shall any such employee be discharged by reason of any Union activity not interfering with the proper performance of this work.

It is the intention of the parties that all workmen covered hereby shall be or become forthwith upon employment and remain continuously, members in good standing of the International Unions signatory hereto through their affiliated Local Unions having work and area jurisdiction and on whose behalf this Agreement is executed, as a condition of employment, and that this provision shall become operative without further notice or amendment whenever amendments to or judicial interpretations of the Labor-Management Relations Act of 1947 remove the inhibitions against the application of this paragraph now existing under the present wording and judicial interpretations of that Act.

It is agreed that all workmen covered hereby shall be or become, not more than thirty (30) days after employment and remain continuously, members in good standing of the International Unions signatory hereto through their affiliated Local Unions having work and area jurisdiction and on whose behalf this Agreement is executed, and shall remain available for work as a condition of employment.

B. That in the employment of workmen for all work covered by this Agreement in the territory above described, the following provisions, subject to the conditions of Article II-A, above, shall govern:

1. That the Local Unions shall establish and maintain open and nondiscriminatory employment lists for employment of workmen in the work and

area jurisdiction of each respective Local Union of each particular trade.

That the Contractors shall first call upon the respective Local Unions having work and area jurisdiction, or their Agents, for such men as they may from time to time need, and the respective Local Unions, or their Agents, shall immediately furnish to the Contractors the required number of qualified and competent workmen and skilled mechanics of the classifications needed by the Contractors.

That the respective Local Unions, or their Agents, will furnish each such required competent workmen or skilled mechanic entered on their lists, to the Contractors by use of a written referral and will furnish such workmen or skilled mechanics from the respective Local Unions' listing in the following manner:

(a) Workmen who have been recently laid off or terminated in that respective Local Union's work and area jurisdiction by the Contractors now desiring to re-employ the same workmen in that same area provided they are available for employment.

(b) Workmen who have been employed by Contractors in the respective Local Union's work and area jurisdiction within the multiple-employer unit during the previous ten (10) years, and who are available for employment.

(c) Workmen whose names are entered on the list of the respective Local Union having work and area jurisdiction and who are available for employment.

* * * * *

That workmen employed by the Contractors for a period of thirty (30) days continuously or accumulatively within the multiple-employer unit and procured in accordance with II, B-1, (c), above or procured from other sources by the Contractors themselves, shall become members of the appropriate craft Union signatory hereto immediately, upon terms and qualifications not more burdensome than those applicable at such times to other applicants to such Union.

B. Operation of Local 12's dispatch system.

Based upon this agreement, Local 12 operated a job referral or dispatch system for supplying the requirements of AGC members for operating engineers and allied classifications. Telephone calls from these employers were made to the union office for workmen qualified to operate specific types of equipment. The Respondent maintained two referral lists. The first was headed "Members" and included all members of Local 12 who had reported that they were seeking work. According to the testimony of McNeel, an official of Local 12, there was no distinction in this group between those Local 12 members who had and those who had not previously worked for employers who were part of the AGC unit. The second group was entitled "Applicants and Others" and included members of other Locals of International Union of Operating Engineers who had transferred into the geographical area of Local 12 as well as any nonunion workman who applied at the dispatch office for work within the Local's jurisdiction.

When an employer requested a workman with particular qualifications, an employee in the office of Local 12 would first examine the "Members" list for a qualified individual. If that list did not contain an individual with the proper qualifications, the clerk would then resort to the "Applicants and Others" list. An individual dispatched from the latter list was required to pay a work permit fee of at least \$2 per week.³

Under the union-security provision of the bargaining agreement, individuals newly hired in the multi-employer unit had 30 days within which to join Local 12, although as we have noted in footnote 3, the constitution of the International Union prohibits any of its Locals from issuing a work permit to anyone who has not already applied for membership. Moreover, the practice of Local 12 conformed to the requirements of the International's constitution. McNeel testified that it was the practice for applicants for employment to apply for membership at the time of their first referral,

³ Article XV, Section 3 (e) of the International Union's constitution requires each Local which permits applicants for membership to work under a contract with, or under control of, the Local to charge minimum weekly permit dues of \$2 of each hoisting or portable engineer or apprentice. Section 3 (h) provides that no temporary permit for work shall be issued to anyone who is not either a member of the International or an applicant for membership therein. The Trial Examiner found that the Respondent charged \$2.50 per week for a work permit. The Respondent did not except to this finding.

although on occasion an applicant might be dispatched to a job without paying any part of the initiation fee which was due when a membership application was submitted.

C. Robert A. Holderby.

Holderby obtained referrals through Local 12 beginning in September 1951. In January 1953, he was suspended from membership for dues delinquency, but was reinstated two months later upon payment of all the fees and dues for which he was liable. In June 1953, the executive board of Local 12 expelled him from the Local by rejecting his previous application for reinstatement, and returned to him all the initiation fees, dues and permit fees which he had ever paid to Local 12. Between January 1953, when he was first suspended, and June 1953, when he was finally expelled, Holderby continued to be regularly dispatched to jobs, but immediately upon his expulsion his name was removed from the "Members" out-of-work register and placed at the top of the "Applicants and Others" list. Thereafter, for approximately 12 months he was never sent out on a job although on one or two occasions the dispatcher attempted to notify him of a possible referral. On June 3, 1954, two days after the issuance of the complaint he was offered two jobs on the same day and continued to be dispatched fairly regularly until shortly before the hearing, when again no jobs were made available to him.

For about four months during this period, Hold-

erby was employed as a truck salesman working on commission. He testified that during the entire period in which he was not being referred to jobs by Local 12, he was available for work as an operating engineer, and had attempted to obtain construction jobs through personal applications to contractors. At no time was he successful in obtaining work within Local 12's jurisdiction directly from contractors.

D. Conclusions.

1. The complaint does not allege that the hiring arrangement agreed to by AGC and Local 12 is invalid, and the General Counsel limited his case to attacking as discriminatory only certain practices followed in the operation of that system.⁴ The General's failure to allege that the agreement was itself illegal, precludes the Board from making any finding on that point.

But apart from the question of the agreement's validity under Section 8 (a) (3), we nevertheless

⁴ The Trial Examiner expressed bewilderment as to the General Counsel's theory of the case, although the complaint, the presentation of the case, and the brief to the Trial Examiner make it clear that the General Counsel considered as violative only the practices discussed below, and not the agreement itself. Despite his stated inability to understand the basis for the action, the Trial Examiner discussed the practices used by Local 12 in its dispatch procedure. His failure to find any violation on the Respondent's part is not, therefore, due to any deficiency in the General Counsel's case.

find that, in the following particulars, the dispatch system was not being administered by AGC⁵ and Local 12 in accordance with its terms.

(a) Under the contract dispatch procedure, a qualified individual who had worked in the AGC unit within the previous 10 years was entitled to referral preference over others, including members of Local 12 and applicants for membership. In practice, however, union members were given job preference regardless of whether they had ever worked in the AGC unit. Moreover, Holderby's name was removed from the preferred "Members" list after he was expelled from Local 12 despite his right to preference as a former worker within the AGC unit.

(b) Under the agreement, a nonunion workman dispatched by Local 12 was not required to join the Union until after 30 days of continuous or accumulative employment within the AGC unit. It was the practice, however, for nonunion prospective employees to apply for union membership immediately upon their first dispatch. The Respondent con-

⁵ Although AGC is not a respondent, we believe that its delegation to Local 12 to operate the dispatch system did not relieve it of a responsibility to insist that the Union fulfill its contractual obligation of maintaining nondiscriminatory hiring lists. AGC is not, of course, a necessary party respondent to a complaint alleging a violation of Section 8 (b) (2). *Radio Officers' Union of the Commercial Telegraphers' Union, AFL*, 347 U. S. 17, enforcing 93 NLRB 1523, 1527; *National Union of Marine Cooks and Stewards*, 92 NLRB 877.

tends that this was voluntary on the part of each prospective employee, and that discrimination against nonunion employees or prospective employees cannot be presumed as long as there was no compulsion by the Union to require them to apply for membership immediately. We believe that in fact nonunion employees could not exercise a free choice between applying for union membership immediately or after the first 30 days of employment. Job applicants were aware that their only chance of obtaining employment with AGC employers was through Local 12's dispatching office. To say, as the Respondent does, that all job applicants voluntarily applied for membership immediately, is to ignore the practical situation in which such applicants were placed. Realistically, they were in no position to stand on their statutory right of refusing to submit an application for membership in the Union for at least 30 days. The fact that prospective employees were, on occasion, dispatched before they had paid any part of their initiation fee is corroboration that immediate application in the Union was obligatory, since only applicants were required to pay initiation fees. Nor does any relaxation by Local 12 of its usual practice of requiring some part of the initiation fee immediately excuse the violation of denying to job applicants the 30-day grace period given them by the statute. Moreover, we have no reason to believe that Local 12 did not abide by Section 3 (h) of Article XV of the International's constitution which prohibits a local union from issuing a temporary work permit to

anyone who is not either a member of the International or an applicant for membership.

(c) The contract makes no provision for the payment of work permit fees by nonunion applicants for employment. In practice, nonunion applicants using the Respondent's dispatch system were required to pay at least \$2.00 per week for the right to work for AGC members, whereas Union members were not required to pay such a fee. The Respondent neither contended nor proved that this special charge levied upon nonunion applicants was in any way related to the cost of operating the dispatch system for the benefit of such employees.

By the aforesaid practices, the Respondent caused the Employers to discriminate against nonunion applicants for employment to the advantage of Union members.

2. The General Counsel contends that, after expelling Robert Holderby from membership, the Respondent denied him further job referrals in violation of Section 8(b) (2) and (1) (A) of the Act. The Respondent does not deny that it removed Holderby's name from the preferred "Members" list when it expelled him from the Union, but it argues that the General Counsel has not proved that there were jobs available to which Holderby would have been referred but for the removal of his name from the "Members" list. In answer to this contention, the General Counsel asserts that the mere removal of Holderby's name from the contractual preferred list because he had lost his Union membership was a violation of the Act, and that the extent to which

Holderby actually suffered loss of employment as a result of the removal is a matter for determination at the compliance stage of the proceeding.

We agree with the General Counsel. It is clear that, for the purposes of job referral, Local 12 refused to consider Holderby on an equal basis with individuals who were entitled to preference under the AGC agreement, simply because he was no longer a member of Local 12. "This denial of equal access to the available jobs was in itself and without more a restrictive imposition in violation of the Act."⁶ Because of the casual and occasional nature of the jobs to which Holderby had been referred before his expulsion and because of the practice of preferring union members, we are unable to determine now to what extent Holderby was injured by the unlawful system of preferences. This is, however, a matter which can properly be settled in the compliance stage of the proceeding.

We find, accordingly, that the Respondent violated Sections 8 (b) (2) and 8 (b) (1) (A) of the Act by operating the dispatch system authorized under its agreement with AGC so as to discriminate against nonmembers of Local 12 in the following respects: by equating the preference in job referrals to which workmen in the AGC unit within the past 10 years were entitled with membership in Local

⁶ *N. L. R. B. vs. Local 803, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL*, 218 F.2d 299, (C.A. 3), January 12, 1955, 35 LRRM 2355, enforcing 107 NLRB 1011.

12, thereby giving preference in job referrals to the latter; by requiring prospective nonunion employees to apply for membership in Local 12 immediately upon their first referral; and by imposing a permit fee on nonunion employees when working in its jurisdiction within the AGC unit.⁷ We also find that by removing Holderby's name from the "Members" list because of his expulsion from the Union, thereby denying him equal access to jobs, the Respondent further violated Section 8 (b) (2) and (1) (A) of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of Associated General Contractors, Southern California Chapter, described in Section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing the free flow of commerce.

V. The remedy

Having found that the Respondent operated its dispatch system in a discriminatory manner by preferring its members in job referrals over nonunion workmen or job applicants, thereby engaging

⁷ Local 420, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, 111 NLRB No. 190.

in certain unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act, we shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make Robert A. Holderby whole for any loss of pay suffered by him as the result of its unlawful conduct, by payment to him of a sum of money equal to the amount he would normally have earned as wages if his name had not been removed from the list of those entitled to job preference by their employment within the past 10 years in the AGC unit. In computing the amount of back pay due Holderby, the customary formula of the Board set forth in *F. W. Woolworth Company*, 90 NLRB 289, shall be applied. As the Trial Examiner did not find that Local 12 discriminated against Holderby, the period from the date of the Intermediate Report to the date of the Order herein shall, in accordance with our usual practice, be excluded in computing the amount of back pay due him.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Associated General Contractors, Southern California Chapter, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Union of Operating Engineers,

Local No. 12, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By causing the aforementioned multi-employer Association to discriminate against employees and prospective employees in violation of Section 8 (a) (3) of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

4. By restraining and coercing employees and prospective employees of the multi-employer Association herein involved in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Union of Operating Engineers, Local No. 12, AFL, its officers, agents, successors, or assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause employer-members of Associated General Contractors, Southern California Chapter, to discriminate against non-

union employees, including Robert A. Holderby, and prospective employees by operating the dispatch system provided for in their collective bargaining agreement, so as:

(i) to give preference in job referrals to its members,

(ii) to require nonunion applicants for employment to apply for membership in Local 12 immediately upon their first referral, and

(iii) to impose work permit fees on nonunion employees who work within its craft jurisdiction in the AGC unit;

(b) In any like or related manner restraining or coercing employees or prospective employees of employer-members of Associated General Contractors, Southern California Chapter, in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in Local 12 as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole Robert A. Holderby for any loss of pay he may have suffered as a result of the discrimination against him, in the manner set forth in Section V, above, entitled "The remedy";

(b) Post in conspicuous places at the job dispatching offices of the Respondent, and in all places where notices or communications to its members or applicants for employment are customarily posted,

copies of the notice attached hereto and marked Appendix.⁸ Copies of said notice to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Mail to the Regional Director for the Twenty-first Region signed copies of the notice attached hereto as Appendix, for posting, the employers willing, at the job sites of employers who, through membership in the Associated General Contractors, Southern California Chapter, obtain employees through Respondent's dispatch system. Such notices are to be posted and maintained for a period of sixty (60) consecutive days after receipt by the employers. Copies of the notices to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by an official representative of the Respondent, be forthwith returned to the Regional Director for posting;

(d) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days

⁸ In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

from the date of this Order, what steps the Respondent has taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges a violation of Section 8 (b) (1) (A) or 8 (b) (2) of the Act with respect to Frederick R. Hummel or Hoyt Covert.

Dated, Washington, D. C., August 15, 1955.

GUY FARMER, Chairman

IVAR H. PETERSON, Member

PHILIP RAY RODGERS, Member

(Seal) National Labor Relations Board

Abe Murdock, Member, dissenting:

It seems to me that the majority has misconceived the nature of the unfair labor practice to be determined in this case. No section of this Act forbids discrimination by labor organizations. Employers alone under Section 8 (a) (3) are forbidden to discriminate against their employees to encourage or discourage union membership. Unions, on the other hand, are forbidden under Section 8 (b) to (2) to "cause or attempt to cause" such discrimination *by an Employer*. It is therefore completely outside the applicable proscription of this Section of the Act to find, as the majority does, that the Respondent Union discriminated "against nonmembers of Local 12." The fact that the Respondent Union may have referred one employee rather than another to prospective employers is not sufficient, in

my opinion, to prove that the Union *caused* a particular employer to engage in an act of discrimination. Indeed, the record in this case contains not the slightest evidence that any employer took any action or was induced or requested by the Union to take any action to the detriment of any employee. In this respect, at least, the *Boilermakers* case upon which the majority relies is entirely inapposite. There the court found that the "record is clear that because the complainants were delinquent in union dues the *employers* refused to consider them on an equal basis with union men in good standing who were applying for such extra work as was available."⁹ (*Italics added.*)

The General Counsel does not contest the legality of the agreement between the Union and the contractors' Association whereby the Union agreed to refer applicants for employment to members of the Association. If, however, this contract is legal there is no act by any employer in this case which is even remotely related to discrimination against any employee. But the majority finds, nevertheless, that the Union caused the members of the Association to engage in acts of discrimination against employees and prospective employees. I am unable to determine from a reading of the majority's decision the basis of their conclusion that the referral practice of the Union, unauthorized under the terms of its contract

⁹ N.L.R.B. vs. Local 803, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL, *supra*.

with the Association, constitutes discrimination by members of the Association against employee applicants generally and Holderby in particular. If the majority is holding implicitly that the Union was acting as an agent of the Association, in discriminating among applicants in violation of Section 8 (a) (3), there is, in my opinion, no warrant for such a finding in this case. The only authorization extended to the Union by the Association was to refer applicants for employment in accordance with the terms of the contract which, as indicated above, is not alleged to be an unlawful agreement. Certainly, there is nothing in the common law rules of agency making members of the Association liable, as principals, for unauthorized acts of the Union, particularly where, as here, those acts are found to be in violation of a federal statute.

I believe the majority has misread the language of Section 8 (b) (2). The Statute clearly establishes that discrimination by an employer is a prerequisite to a finding of unlawful causation under Section 8 (b) (2). In the instant case the majority's decision, in effect, converts discrimination by a Union into discrimination by an employer. In my opinion, this goes beyond the literal language of Section 8 (b) (2) and the intent of Congress in its enactment.

For these reasons I dissent.

Dated, Washington, D. C., August 15, 1955.

ABE MURDOCK, Member
National Labor Relations Board

APPENDIX

Notice to all Members of International Union of Operating Engineers, Local No. 12, AFL, and to all Employees and Prospective Employees of Employer-Members of Associated General Contractors, Southern California Chapter, Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not cause or attempt to cause employer-members of Associated General Contractors, Southern California Chapter, to discriminate against nonunion employees, including Robert A. Holderby, and prospective employees by operating the dispatch system provided for in our collective bargaining agreement, so as:

- (1) to give preference in job referrals to our members;
- (2) to require nonunion applicants for employment to apply for membership in Local 12 immediately upon their first referral; and
- (3) to impose work permit fees on nonunion employees who work within our craft jurisdiction in the AGC unit.

We Will Not in any like or related manner restrain or coerce employees or prospective employees of employer-members of Associated General Contractors, Southern California Chapter, in the exer-

cise of the rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in Local 12 as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will make Robert A. Holderby whole for any loss of pay he may have suffered as a result of the discrimination against him.

International Union of Operating
Engineers, Local No. 12, AFL,
(Labor Organization)

By
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date of posting, and must not be altered, defaced, or covered by any other material.

Affidavit of Service and Postal Return Receipts attached.

Before the National Labor Relations Board
Twenty-First Region

[Title of Causes 21-CB-564, 21-CB-536, 21-CB-586.]

TRANSCRIPT OF PROCEEDINGS

Room 704, 111 West Seventh Street, Los Angeles,
California, Monday, October 18, 1954.

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 o'clock, a.m. [1*]

Trial Examiner Wilson: The hearing will come
to order.

This is a formal hearing before the National
Labor Relations Board in the case of the Inter-
national Union of Operating Engineers, Local No.
12, AFL, and Robert A. Holderby, An Individual,
et al., Case Nos. 21-CB-564, 21-CB-536 and 21-CB-
586.

The Trial Examiner appearing for the National
Labor Relations Board is Thomas S. Wilson.

Will counsel please state their appearances for
the record?

Mr. Grodsky: Appearing for the General Coun-
sel is Ben Grodsky.

Appearing for Robert Holderby, Robert A. Hol-
derby, himself.

Mr. Sokol: David Sokol for the Union.

Mr. McNeel: H. M. McNeel for the Union.

* * * * [4]

* Page numbers appearing at top of page of original Reporter's
Transcript of Record.

HAROLD M. McNEEL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: State your full name and spell your last name for us. [8]

The Witness: Harold M. McNeel, M-c N-e-e-l.

Trial Examiner: Thank you.

Q. (By Mr. Grodsky): What is your title?

A. Labor relations representative of Local 12, International Union of Operating Engineers.

* * * * [9]

Q. (By Mr. Grodsky): Mr. McNeel, does Local 12 have an agreement with the Associated General Contractors? A. It does.

Q. And do you have a copy of that agreement here?

A. I do. We haven't a copy of the, we only had one signed copy and I didn't bring that along of the newly negotiated agreement but our standard form agreement embodies all the provisions of the master labor agreement, BCA, EGCA, AGC and so forth.

Q. You mentioned a number of other initials. I think we might as well clarify them. You have a similar form of agreement to the one which I have and which I'm marking for identification as General Counsel's 2. It is labeled at the top "Standard Form Agreement" and consists of 17 numbered pages and an appendix of two additional pages marked "Appendix A," is that correct?

(Testimony of Harold M. McNeel.)

A. Correct.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. Grodsky): This standard form agreement is the agreement between yourself and the Associated General Contractors?

A. Not that agreement, not the standard form. The standard [10] form agreement is for independent contractors who are not members of either the AGC or BCA or EGCA.

Q. Have you had occasion to examine the complaint filed in this proceeding, Mr. McNeel?

A. Yes.

Q. And attached to the complaint is an excerpt marked Exhibit A purporting to set forth the union recognition clause in the Associated General Contractors during the period that was in issue in this complaint. Have you read that union recognition clause which was attached to the complaint?

A. I'm not just certain. I can tell by looking at it.

As far as I can see, it is identical to the provision of the master labor agreement.

May I compare just one paragraph?

Q. Surely.

A. That is not exactly correct according to the AGC agreement.

Mr. Sokol: Where?

The Witness: This is what I had reference to. That is a copy, supposedly.

(Testimony of Harold M. McNeel.)

Mr. Grodsky: Now, you are testifying. I would like you to tell us on the record——

Mr. Sokol: I think it's going to be confusing. Let's be off the record.

Trial Examiner: Off the record.

(Discussion off the record.) [11]

Trial Examiner: On the record.

As a result of the off the record discussion, I understand it has been stipulated that the Exhibit A referred to which is attached to and made part of the complaint is a true copy of the provision concerning union security in the AGC contract and will so be considered unless specific objections are raised during the course of the hearing.

Mr. Sokol: Unless we correct it.

Mr. Grodsky: That's right.

Trial Examiner: Fair enough. The stipulation will be received.

Q. (By Mr. Grodsky): With reference to other employers, you use the standard form of agreement which embodies a description of union recognition in Article 2 of the standard form, is that correct?

A. I can't——

Mr. Sokol: Well, it's the same thing.

Mr. Grodsky: There's slight differences. I'm not trying to mislead anybody. There appears to be some differences of words, at least.

The Witness: We are talking about two different contracts. This is a new, the contract negotiated this year and you are talking about last year's agreement.

(Testimony of Harold M. McNeel.)

Q. (By Mr. Grodsky): I see. Last year's contract, the standard form contract had identical language? [12]

A. Language of AGC and master labor agreement.

Q. That's right. And when you say master labor agreement, that is the agreement between yourselves and the Associated General Contractors, at least, the agreement between yourselves and the Associated General Contractors is the master labor agreement? A. That's right.

Trial Examiner: And that is the copy which is Appendix A attached to the complaint, at least, the recognition clause?

The Witness: Yes, that is correct.

Q. (By Mr. Grodsky): Now, Mr. McNeel, are you familiar with the hiring provisions in the union's constitution and by-laws and trade rules?

A. I think so.

Q. And could you tell us whether those hiring provisions require the employer to secure employees exclusively through your hiring hall?

Mr. Sokol: I object to that.

Mr. Grodsky: I thought we would save time. The objection is proper and I will withdraw the question.

Trial Examiner: All right.

Q. (By Mr. Grodsky): Do you have copies of the constitution, by-laws and trade rules?

A. I have.

Q. I trust you have duplicates? [13]

(Testimony of Harold M. McNeel.)

A. Maybe we can do that. Now, these are the old trade rules.

Mr. Sokol: When did these go out?

Mr. Grodsky: These are last year's.

Trial Examiner: Let's go off the record while you gentlemen get the exhibits.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Grodsky): I will ask you if General Counsel's 3 for identification is the constitution of the International Union of Operating Engineers. A. It is.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 3 for identification.)

Q. (By Mr. Grodsky): And General Counsel's 4 is the by-laws of Local 12? A. It is.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. And General Counsel's 5 is the trade rules and wage scales of Local 12 which was effective January 15, 1953?

A. Right, that is correct.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 5 for identification.)

Q. (By Mr. Grodsky): And those by-laws have, in part, been superseded by more current ones, is that correct? [14]

A. Not the by-laws, trade rules.

(Testimony of Harold M. McNeel.)

Q. Trade rules, is that correct?

A. That is correct.

Q. And the current trade rules will be found in General Counsel's 2 for identification?

A. That is correct.

Q. And they have not been printed up in a booklet? A. That is correct.

Mr. Grodsky: At this time I offer General Counsel's 2, 3, 4 and 5 in evidence.

Trial Examiner: Any objection?

Mr. Sokol: No objection.

Trial Examiner: Understanding there is none, I will admit them in evidence.

(The documents heretofore marked General Counsel's Exhibits Nos. 2, 3, 4 and 5, inclusive, were received in evidence.)

[See pages 149-157 for Exhibits 2, 3 and 4.]

Mr. Grodsky: Through the courtesy of the respondent, I'm offering them in duplicate.

Q. (By Mr. Grodsky): Now, Mr. McNeel, does Local 12 operate a hiring hall?

A. Not as such.

Q. Well, that is a rather peculiar answer. What does it operate which resembles a hiring hall?

A. Depends upon the definition of hiring hall. The common definition in labor movement, a hiring hall is where men come [15] in to be dispatched to work. That isn't our procedure.

Q. That isn't your procedure. All right, what is your hiring procedure?

A. Well, our hiring procedure is that a man

(Testimony of Harold M. McNeel.)

comes in or he can call in. He doesn't have to come in, place himself on the out-of-work list. And when he is dispatched to a job, he is dispatched by telephone, ordinarily. He either comes in and picks up his referral slips or it is mailed to the contractor's address or to him. He is not required to come into the hall.

Q. Are all men required to have referral slips when they go out to the job?

A. Well, they can, they are required to have a referral slip but not necessarily to go on the job. Sometimes in remote areas he may not get his referral for two or three days until the office has mailed it to him.

Q. But the man has to have made arrangements before he goes to work?

Mr. Sokol: I think that would be leading. If you want to get the facts, why not ask him?

Trial Examiner: Change your question.

Mr. Grodsky: I will try changing it to see what happens.

Q. (By Mr. Grodsky): I will ask you the other question I asked you again, Mr. McNeel. Does the man have to, before he goes on the job, must he have made arrangements to receive a [16] referral slip?

A. Ordinarily.

Q. And is that—

Trial Examiner: What do you mean by "ordinarily"?

The Witness: Sometimes there's exceptions.

Trial Examiner: All right.

(Testimony of Harold M. McNeel.)

The Witness: We don't go by the hard and fast rule but we have that rule if that is what you want to know.

Q. (By Mr. Grodsky): Is that rule covered by your trade rules? A. It is.

Q. I will show you the trade rules now and ask you——

Mr. Sokol: It's in there and I think asking him to read an exhibit that would be taking up time.

Mr. Grodsky: I just want him to refer to it.

The Witness: You want me to read this aloud?

Q. (By Mr. Grodsky): Just refer to Section 16.

Now, Section 16 doesn't provide for any exceptions, does it? A. No.

Q. Now, in the operation of the hiring hall, the complaint sets out that there are several wheels on which the names of certain groups of employees are entered in the union's offices.

Are you familiar with those wheels?

A. Fairly so. [17]

Q. What did you say, fairly so? A. Yes.

Q. You don't——

A. I, that is, that is not in my department but we do refer to the wheels occasionally.

Q. Do you know what information is carried on those wheels? A. Yes, sir.

Q. There are two groups of wheels, one is inactive and the other is active, is that correct?

A. No, sir, all active.

(Testimony of Harold M. McNeel.)

Q. They are all active? A. That's right.

Q. And how many wheels are there?

A. Well, are you referring to wheels, I presume that you mean the number of card indexes or the ones that are in the cards that are in the wheels. We have, as you know, some 15,000 of them there.

Q. You have—strike it. I will approach it from another point of view.

When an employer calls for an employee, that is a customary procedure, is it not, for an employer to make a telephone call requesting an engineer or a shovel operator to go on a job? A. Yes.

Q. In such situations, the call would come in normally to one [18] of the office girls?

A. Come into the dispatcher in the office, yes.

Q. What would be done at that point?

A. She would, depends on the classification. In other words, you know, we have many, many classifications. You mentioned the shovel operator. If a contractor called for a shovel operator, the girl would look down, the wheels are classified, also. She knows those people who are qualified to operate a shovel. So she looks at those cards that are shovel operators. Then she refers to the out-of-work list which she has to see if this man first is qualified as a shovel man. Then she puts in—he may not be at the top of the list, he may be way down on the list, so she calls him and says come pick up your clearance and go out to the job.

Q. Now, we have had——

(Testimony of Harold M. McNeel.)

Trial Examiner: Well, let me get something straight. You say he may not be at the top?

The Witness: At the out-of-work list.

Trial Examiner: By that you mean there may be other classifications who are out of work who are ahead of him on the out-of-work list, is that right?

The Witness: That's right.

Trial Examiner: But he would be the first of the out-of-work shovel operators?

The Witness: Yes. [19]

Trial Examiner: I get it.

The Witness: In the out-of-work list, I will explain that and then do away with a lot of questions.

In the out-of-work list, a man is not classified on the out-of-work list. He may be an oiler and he may be a cat-skinner or any other classification but on the out-of-work list he is not classified but the girl looks to see if they are on the out of work list or who is on the out-of-work list.

Trial Examiner: I see.

The Witness: In regard to dispatching, the particular man called for is called for by classification.

Trial Examiner: Yes.

Q. (By Mr. Grodsky): You maintain a single out-of-work list? A. Yes.

Q. And who is listed on that out-of-work list?

A. Everyone that has called in or come in and put their name on the out-of-work list.

Q. And with reference to the qualifications, do

(Testimony of Harold M. McNeel.)

you make any effort to determine the man's qualifications?

A. Not at the dispatching of a job necessarily because he is already classified as a shovel operator.

Q. And how does he achieve the classification, let's say, as a shovel operator?

A. Originally, initially, well, he starts out as an apprentice or oiler. It's not an indentured apprentice program. [20] This oiler might conceivably learn to operate a shovel in nine months, we will say, or it might take him two years or it might take him four years. And the contractor is the whole judge, not us. He is the one that classifies them, not us.

Q. Now, when a man feels that he is qualified to operate a shovel, he simply notifies the union of that fact and it is noted that he claims to be a shovel operator, is that correct?

A. Oh, no, not as simple as that. He calls before an advisory board and is asked as far as we can determine without going out on the job and watching him operate whether he is qualified to do that work.

Q. Then after you have made a kind of oral examination of the man, you will then note what his qualifications are and you will use that as a basis for reference, is that the way it works?

A. You mean reference, to whom?

Q. To the job.

A. No, we—I don't know what you mean by

(Testimony of Harold M. McNeel.)

referral, the referral or by reference, I don't know what you mean by reference.

Q. What I mean is that John Jones who has been working as an oiler, he comes up before your board and says, "I am qualified to be a cat-skinner, I am qualified to be a drag line operator, I am qualified to be a "B.C.D."

Your board then, which is, as I understand from your [21] testimony, a union board, is that correct?

A. Yes.

Q. The board then will ask him various questions and, let's say, that they determine that he is qualified in categories A, B, C and not qualified in the other categories in which he claimed qualification. Will they make a record that he is qualified to work in categories A, B and C?

A. I don't know that that has ever been done. If he is going to be a cat-skinner, then the board will interrogate him as a cat-skinner, not in all the other classifications and then if they think that he is in their opinion, then they will sign his application to come into 12 because he is not in the mother local at the time he is an oiler so he has to re-classify and be on as a journeyman classification.

Q. You have men in Local 12 who are qualified for a large number of jobs, don't you?

A. Yes.

Q. How does a man get to be qualified for a large number of different tasks?

A. Works the same way. He gets some contractor to let him run the different pieces of equipment

(Testimony of Harold M. McNeel.)

and he gets qualified. He is sent out on a job and maybe he is not qualified for the job, the contractor may send him back. We are, that is entirely in the——

Q. Mr. McNeel,—— [22]

Mr. Sokol: Let him finish.

The Witness: That is entirely within the contractor. We don't have anything to say about that.

Q. (By Mr. Grodsky): Maybe I don't make myself clear or maybe you don't. But, as I understand it, if a call comes in, let's say, for a screed operator, you look to see who has qualified for that—by you, I mean the person in the dispatching office—and you wouldn't send out someone whose qualifications don't show screed operator?

A. That's right.

Q. Let's assume that the man gets out on the job and that the contractor after a half day's work puts him to work, say, operating a tractor, caterpillar tractor. The man then thinks he is qualified to operate that piece of equipment. How will that be translated into him being referred out later to work as a caterpillar operator?

A. When he changes from one piece of equipment to the other, he must get a clearance to the other piece of equipment so we have a record of what piece of equipment he was on.

Q. After the man has worked on a piece of equipment, will it then automatically show in his record that he is qualified to work that additional piece of equipment?

(Testimony of Harold M. McNeel.)

A. As far as we are concerned.

Q. In other words, every time that a referral is made, made of that sort, if that referral is noted on to his work record—— [23] A. Yes.

Q. ——and thereafter if calls come in for, say, caterpillar operators, this man will be considered along with others? A. Yes.

Trial Examiner: May I break in here for a second?

Q. (By Trial Examiner): You say that a man must have clearance from your union before he can change from one type of equipment to another?

A. He isn't always required, but it is done. A man, it should be done, in fact, say it that way. It isn't a hard and fast rule.

Q. Suppose a man is sent out to a job as a cat operator and the employer, for some reasons best known to him, wants him to work on a shovel. Would the employer have to call the union and say, "We want to move Joe Blow from the cat to the shovel?"

A. No, they don't have to get permission from us to do that. The only time he would have to get a clearance would be when he went from one group to the other. We have, now, as you see on the wage scales and classifications, we have nine groups of pay scales.

Q. Oh.

A. So if he was in this group down here and transferred up to this top group, then he would get a clearance because the wage rate changes.

(Testimony of Harold M. McNeel.)

Q. Then, it's the change between wage rates that require a [24] clearance?

A. Between groups.

Q. I see.

Mr. Sokol: Is that so the union will know what scale he is entitled to?

The Witness: Yes, so we know the scale.

Q. (By Mr. Grodsky): With reference to the qualifications of the men, is there any way that the dispatcher can tell by looking at the card quickly what qualifications a man has?

A. To some degree.

Q. And how is that?

A. They can see how long they have been on a job. If they only worked one day and the next day the contractor sent him back, he couldn't do the work and the contractor sends him back, you will know pretty well that he's not a cat-skinner.

Q. The girls, the dispatchers don't make that evaluation, do they?

A. No, that is entirely up to the contractor.

Q. But what I'm getting at, is if a call comes in, let's say, for a shovel operator, would the dispatcher look at the first name on the out-of-work list and then go to her wheel and check if that person is a shovel operator? A. No.

Q. Well, how would she go about it?

A. As I explained before, each card is tabbed to tell who [25] is a shovel operator, who is a cat-skinner, who is a Barber Green operator.

Q. Which cards?

(Testimony of Harold M. McNeel.)

A. I'm talking about the cards in the wheel.

Q. That is what I'm getting at——

A. Those are tabbed so she can turn that over and see how many different classifications are there.

Q. How does she tell, you certainly have a lot of people who qualify in some of these categories, how can she tell which of those people are on the out-of-work list and what their position is?

A. She can't, she checks.

Q. In other words, what you are telling me now is she starts looking who is a shovel operator and then goes to the out-of-work list?

A. That's right.

Q. In that way she wouldn't be able to tell which was nearer the top of the out-of-work list, in other words, let's say, numbers 15 and 35 on the out-of-work list have the same qualifications and she goes to the wheel and finds number 15 on the out-of-work list is a shovel operator. She would have to go through your wheel and check every single shovel operator before she can determine that number 15 is the man who is entitled to the job, wouldn't she?

A. She could do it that way but it isn't always done that way. [26]

Q. Isn't it a fact that you keep the men who are out of work on a separate wheel from the men who are actually working?

A. Yes, we have an out-of-work wheel, yes.

Q. You have an out-of-work wheel?

A. Yes.

(Testimony of Harold M. McNeel.)

Q. You have, oh, you check your out-of-work list against the out-of-work wheel? A. Yes.

Q. I see, now we are getting some place. The people whose names are listed on the out-of-work wheel are your members, is that right?

A. That's right.

Q. And people who are not members of your Local 12 are not on that out-of-work wheel?

Mr. Sokol: Objected to as leading.

Trial Examiner: I suggest the objection is well taken as to the form of the question.

Mr. Sokol: The prior one, too, you are slanting the case to suit the objective that way. Try to get the facts.

Mr. Grodsky: I'm sorry. The pleadings set out the facts. There's been a general denial.

Trial Examiner: It is up to you to prove the pleadings of your complaint.

Mr. Grodsky: All right.

Q. (By Mr. Grodsky): Do you have occasions when persons who [27] are not members of your local come to the union office seeking employment?

A. Yes.

Q. How are those people handled, what is done?

A. They make out an application card.

Q. Application for what?

A. Well, they put down their, the, well, their name, their address, telephone number and their, what they think they are qualified to operate.

Q. And what is done with that card?

A. That is put in a separate file.

(Testimony of Harold M. McNeel.)

Q. Is there a single file of all of these application cards or are there two or more separate files?

A. Of those?

Q. Yes. A. Just one.

Q. Is there any distinction made between members of other locals of Operating Engineers and applicants who are not members of any local of Operating Engineers?

A. I don't understand that.

Mr. Grodsky: Will you read the question, please.

(The question was read.)

Mr. Sokol: Will you hear the question again?

Trial Examiner: All right, read the question again, please. [28]

(The question was read.)

Mr. Grodsky: I withdraw the question.

Q. (By Mr. Grodsky): Is there any distinction made between applications which are made by members of other locals of the Operating Engineers and applications made by persons who are not members of any local of the International Union?

Trial Examiner: In regard to what?

Mr. Grodsky: In regard to where they are put and how they are handled.

The Witness: Well, you are speaking——

Mr. Sokol: If you know.

The Witness: Yes, well, I only know this that on the same out-of-work list there are the applicants and transfers of what you are speaking about.

Q. (By Mr. Grodsky): Now, are they treated together, one group, applicants and transfers?

(Testimony of Harold M. McNeel.)

A. Transfers are on the out-of-work list headed that way.

Q. And are applicants on another section of the out-of-work list?

A. Applicants, you mean the non-union applicants?

Q. Yes. A. That is a separate file.

Q. In other words, your out of work list, as I understand it now and correct me if I'm wrong, is headed with your members and then below your members is another group which is headed [29] transfers? A. Not below them, no.

Mr. Sokol: All in one?

The Witness: All, the heading is the same but they are not below because if they can't find a man on this list they go on down and it's all tied in, all printed on the same list.

Q. (By Mr. Grodsky): Well, in selecting——

Mr. Sokol: If I understand it, it's Applicants and Others?

The Witness: Yes, Applicants and Others is the way it's headed and then we have oilers and firemen and all groups are headed——

Mr. Sokol: May we have a recess?

Trial Examiner: Yes, we will take a five-minute recess.

(Short recess taken.)

Trial Examiner: I will call the hearing to order. All right, Mr. Grodsky.

Q. (By Mr. Grodsky): How often are these lists revised, the out-of-work list?

(Testimony of Harold M. McNeel.)

A. Well, they are revised every week.

Q. And did I understand your last answer before I recessed to be that there is a single list, a single out-of-work list which lists both the members and applicants and others?

A. Yes. But the difference there, there's a difference between the Applicants and Others list and the so-called information list because there is a provision in the National [30] Labor Agreement that the men, called, I believe, a seniority clause, where they must have worked within the employer unit within the last ten years so the Applicants and Others and the information cards are set aside for that reason. They did not qualify for work within the employer unit under the master labor agreement.

Mr. Sokol: You mean don't qualify for work?

The Witness: I mean to be sent out, they can be sent out.

Mr. Sokol: In order?

The Witness: Sent out in order but they do not qualify in the seniority provision.

Mr. Sokol: So we may have that clear, are you talking about the subdivision (a) on the second page of the exhibit which refers to the first preference going to "workmen who have been recently laid off or terminated in that respective local union's work and area jurisdiction by the contractors now desiring to reemploy the same workmen in that same area provided they are available for employment"?

(Testimony of Harold M. McNeel.)

The Witness: The one I had reference to, ten year provision.

Mr. Sokol: (b) is the one you were talking about, (b) workmen who have been employed by contractors in the respective local union's work and area jurisdiction within the multiple-unit during the previous ten years and are available for employment.

In other words, they don't fit that particular category?

The Witness: No.

Q. (By Mr. Grodsky): Now, I'm more confused than ever and I must confess it. Let's get this straight. Is there one list of out-of-work or more than one list of out-of-work?

A. One list, one list, all on the same list.

Q. And where does this ten year provision that you are talking about get on to the list or how is reference made to it on the list, in what way?

Mr. Sokol: Excuse me, that wasn't his testimony. There is no reference made to the ten year provision on the list. I think he testified that at first. Your question is ambiguous and I don't want to object and take up time.

As I understand it is the first people on the list. the first heading is what?

The Witness: Local 12.

Mr. Grodsky: I'm going to object.

Trial Examiner: All right, go ahead, Mr. Grodsky.

Mr. Grodsky: Let me try and get it without leading questions on either side.

(Testimony of Harold M. McNeel.)

Trial Examiner: All right, go ahead.

Mr. Grodsky: I had a pending question. I will withdraw it.

Q. (By Mr. Grodsky): Mr. McNeel, you don't happen to have here a copy of that out-of-work list? [32] A. No.

Q. The out-of-work list is headed in what fashion? A. Just that, out-of-work list.

Q. And then is there any description under that before you start with names?

A. Just what we call Local 12, the parent body.

Q. Local 12, and under Local 12 are listed the members of Local 12 who have reported that they are out of work? A. Right.

Q. And they are listed there in accordance with the time that they have been out of work, the ones who have longest been out of work are at the top of that list? A. Right.

Mr. Sokol: Now, I can help you.

Mr. Grodsky: It's all right. Let me help myself.

Q. (By Mr. Grodsky): And after all of the people who are members of Local 12 are listed on that list, then you have below that on the same sheet of paper another listing of names, is that correct? A. Right.

Q. And is there another heading there?

A. Yes.

Q. And that other heading reads what?

A. Applicants and Others.

Q. Applicants and Others. And that includes persons who [33] have submitted application cards?

(Testimony of Harold M. McNeel.)

A. Yes, others, too.

Q. I was going to get to that others. What others are there who are listed there?

A. Well, there are transfers in some other locals.

Q. Anybody else?

A. And, no, that covers the, and applicants, of course.

Q. Now, is there any distinction in the listing on that list as between the transfers and as between the applicants? A. No.

Q. In other words, it's a first come, first serve basis?

A. Correct, with the exception of the seniority provision that I mentioned because they don't qualify for that.

Q. Now, how does that seniority provision play a role, first of all, does it play a role in the listing of men in the Local 12 category?

A. Not in—I don't understand that question.

Q. Well, you have two categories there, Local 12 and Applicants and Others? A. Yes.

Q. In the Local 12 category, your ten years provision has no effect?

A. Just the opposite.

Mr. Sokol: Just the opposite.

Q. (By Mr. Grodsky): Is the listing of employees in the [34] Local 12 group, now, in any sense, does it deviate in any way from the fact that the man who has reported out of work goes on the bottom of the list and he works his way up, is there any deviation from that?

(Testimony of Harold M. McNeel.)

A. Yes, yes, there's considerable deviation from that. First of all, a contractor calls in for a specific man and he is on the bottom of the list, he gets him.

Q. He gets the man on the bottom of the list if that is the man he asked for by name?

A. Asks for by name.

Q. If he asks for a man on the Applicants and Others list, would he get him if you have men in your Local 12 of the same qualifications on the out-of-work list?

A. That, I couldn't answer that question. I don't know, in fact, I don't know of that ever happening so I couldn't answer that.

Q. All right. Now, then, there's another exception, also, that if a man has worked on the job for three days or less and he comes back and reports out of work, he takes his old place in line again, is that correct? A. That is correct.

Q. Now, apart from those two exceptions, do you know of any other deviation from the rule that a man reporting out of work, a Local 12 member goes to the bottom of the list and works his way up? [35]

A. Oh, yes, as far as classification is concerned, quite a difference. For example, supposing the blade man, for example, and the request comes in for a blade man. He might be on the bottom of the list. He goes.

Q. He'd be the first top man of blade men?

A. No.

(Testimony of Harold M. McNeel.)

Q. Supposing you had three men listed as blade men?

A. The one who was on the out-of-work list prior to the other two would be the man who was sent to the job. But if there was no one on there excepting this one man that just reported in, he would be sent to the job.

Q. Naturally. A. Unless you——

Q. That is no deviation at all because it's not an exception to the rule that the man who is out of work the longest in that classification gets the job. Is it an exception to that rule? A. Yes.

Q. I'm asking if there are any other exceptions to that rule.

A. No, not that I know of.

Q. You testified extensively here through counsel about a provision involving ten year seniority. Now, what effect does that have with reference to your out-of-work list?

A. Well, it's altogether possible that a man might report in that had not worked in the multiple employer unit, and his [36] card might show that now he would be, remain there until the job was filled by those who were, had been employed in the multiple employer unit, in other words, under the master labor agreement.

Mr. Grodsky: Will you read that answer, please?

(The answer was read.)

Q. (By Mr. Grodsky): In other words, this is a situation where a man who is a member of Local 12 has not worked in the territorial jurisdiction of

(Testimony of Harold M. McNeel.)

Local 12 for the past ten years, that would be a preliminary situation? A. No.

Q. How could the situation arise?

A. A man may have been working for some one contractor, or, many different examples you could give that where a man might not be working under the AGC agreement, he might not be working under that. So he, he's laid off or the job is completed and he puts his name on the out-of-work list but he doesn't go to work under his classification until the men at the top, above him of the same classification who had worked within the employer unit.

Mr. Sokol: Within the multiple employer unit?

The Witness: Yes, within the multiple employer unit so he would stay status quo until the rest of them——

Mr. Sokol: The only reason I interject, sometimes you leave out a word to complete your sentence, you know, so that [37] it's clear. Now, I know you know how to express yourself very clearly and so that this record be clear, take your time and complete the sentence fully.

Trial Examiner: In other words, as I get your answer, Mr. McNeel, there may be possibilities where a member of Local 12 has been working for some of these other initialed companies other than the AGC for a period of ten years?

The Witness: That's right.

Trial Examiner: I see. All right.

Q. (By Mr. Grodsky): Now, when that man

(Testimony of Harold M. McNeel.)

reports his name would be put on the Local 12 list, is that correct? A. That is correct.

Q. It would be put on the bottom of that list, is that correct? A. That's correct.

Q. Would there be any notation to indicate that he would be treated differently than anyone else on that list?

A. Nothing on the list to indicate it.

Q. Then, as time goes on and as men above him are removed for employment, his name goes up on that list? A. Yes.

Q. Now, in due course, his name would reach the top of the list? A. That is correct.

Q. And at that time there will be other men below him on the [38] list, presumably who have worked for contractors within the ten year period, is that correct? A. That is correct.

Q. Now, is there any way, any check made to make sure that he is not dispatched first before these other people?

A. Well, of course, that could be easily done—I couldn't answer as to that, that particular phase of it, I don't know.

Q. Who is the person who is directly in charge of that phase of the operations of Local 12?

A. Carroll, William C. Carroll.

Q. Does Mr. Carroll also have charge of these application cards which persons fill out who come and ask for employment?

A. Dispatching, he is in charge of all the dispatching which covers all phases of dispatching.

(Testimony of Harold M. McNeel.)

Q. Which includes the initial interview of persons seeking employment? A. Yes.

Trial Examiner: He would be known as your dispatcher, then?

The Witness: Well, he's known as dispatcher but not officially.

Q. (By Mr. Grodsky): He is an elected official of the local?

A. That is correct, financial secretary.

Q. Financial secretary? A. Yes. [39]

* * * * *

ROBERT A. HOLDERBY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: State your full name and spell the last name, please.

The Witness: Robert A. Holderby, H-o-l-d-e-r-b-y.

Q. (By Mr. Grodsky): Mr. Holderby, when did you become a member of Local 12? [50]

A. November, 1952.

Q. And before that time——

Mr. Sokol: I respectfully submit, I don't want to presume to be obstreperous by objecting but I believe that the membership card would be the best evidence of his membership and the date of membership if he has it.

Trial Examiner: I overrule the objection.

(Testimony of Robert A. Holderby.)

Q. (By Mr. Grodsky): Before that time, did you make an application for membership?

A. I had.

Q. Now, when you first went, where did you go to make such application?

A. My first effort to join the union was I visited with Mr. Groom, one of the officers of the union. I asked him the procedure as to how I could become a member of the union. He is the treasurer.

Q. Joe Groom is the treasurer?

A. Joseph Groom, yes.

Q. Were you given an application to fill out at that time?

A. The first card was an information card. The second was the regular application for membership.

Q. Now, you filled out the information card, is that similar to the cards that Mr. McNeel was testifying about this morning?

A. Yes, sir.

Q. And on that information card is there a place upon which [51] you note the type of work that you are qualified to do?

Mr. Sokol: Objected to as calling for a conclusion of the witness.

Trial Examiner: Maybe Mr. Sokol will supply you with a copy of the card.

Mr. Sokol: I will certainly try to get it. I don't have it in my file here but I will make a note of it here and get one.

Q. (By Mr. Grodsky): Will you state, Mr. Holderby, what information you put on the information card?

(Testimony of Robert A. Holderby.)

A. If my memory serves me accurately, my application was for the oiler or apprentice to the operating engineers.

Q. Did you at any time after that fill out any other information card or cards?

A. I believe I did when I made re-application for membership in the parent local, Local 12 as journeyman.

Q. As an oiler, you were a member of a subordinate local?

A. That's right. That would be designated as 12-A.

Q. When you made application for membership in Local 12 and filled out an information card, what information did you put on that information card?

A. Again, if recollection serves me accurately, it said, it noted Barber Greene, G-r-e-e-n-e asphalt spreading machine, then rollers, tandem rollers and what they refer to as three legged roller and cat skinner. [52]

Q. Anything else that you recall?

A. No. Subsequent to that, however, I have added to that list other pieces of machinery, or other pieces of equipment.

Q. When you say you have added to it, to the list, what procedure do you follow?

A. In the past, the policy has been to add, if I may cite this, I use this as an example, I was having trouble with my feet so I had to have the type of equipment where I wouldn't be standing. So I requested that I be considered for a tiger or hoist-

(Testimony of Robert A. Holderby.)

ing equipment, just to put my name on that particular classification.

Q. Those are classifications in addition to which you had originally shown? A. Yes.

Q. Now, my question is going to be, what procedure did you use in order to get these additional qualifications listed on your information card?

A. I merely requested the girl at the wicket to add that to my card, to flag it as such.

Q. Do you know whether that was done?

A. To my knowledge, it was.

Mr. Sokol: I move to strike that as a conclusion of the witness. He couldn't possibly know that.

Mr. Grodsky: Wait a minute. Let's find out.

The Witness: Yes, I can. I assume it—— [53]

Trial Examiner: We will hear the testimony.

The Witness: I have seen on the card written "tugger," t-u-g-g-e-r, that is in pencil, I believe.

Q. (By Mr. Grodsky): Have you ever been sent out on any jobs involving these additional classifications which you have requested to be added?

A. No, not on that specific piece of equipment. I can explain something that occurred the summer that qualified me indirectly for another piece of equipment.

Mr. Sokol: There is no question pending.

Mr. Grodsky: There will be in a second.

Mr. Sokol: Let's proceed without having the witness lead it.

Trial Examiner: All right, let's go, Mr. Grodsky.

(Testimony of Robert A. Holderby.)

Q. (By Mr. Grodsky): In connection with any of the equipment which you have listed on your information sheet, did you appear before any board to pass upon your qualifications?

A. Never. Excuse me, may we make a retraction on one piece of equipment, that was on a frame on which I made requests. They sent me out on a frame which had never been noted on my card. So I was referred to a job as a frame operator.

Mr. Sokol: But you went before the board?

The Witness: I did not.

Mr. Sokol: I can't understand that.

Trial Examiner: He did not go before a board.

The Witness: I have never been before a board.

Q. (By Mr. Grodsky): But, as I understand your last answer, you were sent out as a frame operator at the time when your card never showed that qualification?

A. That is correct. I believe the specific date was March of 1953.

Q. Subsequent to your having been accepted into membership for the union, did there come a time when you were suspended for non-payment of dues? A. Yes.

Q. And do you recall the date?

A. I believe the date was the forepart of January, 1954. That was the date of notification, if I remember correctly. However, I could very quickly go through my briefcase and find the date.

Q. Now, if it becomes material we will get that specific date.

(Testimony of Robert A. Holderby.)

Mr. Grodsky: The information I have here, counsel, is that it was January 31. It would come at the end of the month, naturally, January 31 of '53.

Q. (By Mr. Grodsky): Subsequent to that time did you make an effort to be reinstated in the union? A. Yes.

Q. And did you receive any word from the union with reference to reinstatement? [55]

A. Yes.

Q. Was that letter subsequently incorporated in a complaint for declaratory relief filed by your attorney? A. Yes, it was.

Q. And you read that complaint?

A. I did.

Q. At the time that it was filed? A. I did.

Q. And you checked that letter against the complaint? A. I did.

Mr. Grodsky: I have had marked as General Counsel's 6 for identification the complaint filed, and this copy does not have a number, filed by Mr. Holderby against Local 12 and several other defendants who are all officers of Local 12 by Aaron Sapiro, who is the attorney for plaintiff.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 6 for identification.)

Mr. Sokol: You are offering the complaint?

Mr. Grodsky: I'm offering the complaint.

Mr. Sokol: I will not object to this being a true copy.

(Testimony of Robert A. Holderby.)

Tria Examiner: All right.

Mr. Sokol: I just want to look at it for the relevance and, for that reason, on the record, could I have from Mr. Grodsky an expression of what the relevance of this thing is?

Mr. Grodsky: Well, there are two items, two letters in [56] there which are set out in full. One is the letter of March 17, or 18, which counsel is looking at now and, subsequently, a letter from the union, dated June 8, 1953, which letters form the basis for a declaratory judgment action. I am offering the entire document plus the court's ruling in that case of which I have two copies because they do have a functional connection with the balance of this proceeding.

Mr. Sokol: What does this tend to prove or disprove, the two letters?

Mr. Grodsky: The two letters, well, the first letter indicates certain circumstances in which he will be reinstated into membership. The testimony of the witness will be that——

Mr. Sokol: Oh, I see.

Mr. Grodsky: ——that he was treated as a member during that period and, subsequent to the second letter, he was no longer treated as a member for job referral purposes.

Mr. Sokol: You know that this is a true copy, yourself? I think the Board has a copy.

Mr. Grodsky: I have not examined it against the original but if you want me to, I will be glad to do that. I take it from their file.

(Testimony of Robert A. Holderby.)

Mr. Sokol: All right. Just give me a moment.

Trial Examiner: We will go off the record.

(Discussion off the record.)

Trial Examiner: On the record. All right, Mr. Sokol? [57]

Mr. Sokol: With respect to the proffered document, I have no objection on the ground it is not a true copy of the original on file in the court but I do object on the grounds it is immaterial in these proceedings.

Mr. Grodsky: Now, I have explained to the Examiner and Mr. Sokol already in my statement that appears on the record as to why I deem the entire document material. Now, as to lack of proper foundation with reference to the two letters with which I'm concerned at this juncture of the proceeding, I think I can clear that up through the witness if I may.

Trial Examiner: All right, clear that up.

Q. (By Mr. Grodsky): Mr. Holderby, you have seen the original of these two letters, the letter of March and letter of June to you? A. Yes.

Q. Do you know where those two originals are at this time?

A. I believe those two originals are in the District Court of Appeals.

Mr. Sokol: In other words, this case which was in the Superior Court of the State of California, in and for the County of Los Angeles is now on appeal in the District Court of Appeals in the State of California?

(Testimony of Robert A. Holderby.)

The Witness: That is correct.

Mr. Sokol: And those two letters which were exhibits in that case are with the records of the case in the District [58] Court of Appeal?

The Witness: That is correct.

Q. (By Mr. Grodsky): And the words of the two letters are exactly copied in the complaint, is that correct? A. Yes, sir.

Q. So that where the two letters are set forth in the complaint, they are exactly the same as the letters which are in the Appeals record?

A. Yes.

Mr. Grodsky: I will now offer the document.

Trial Examiner: I think now the letters are certainly admissible as set forth in the complaint. I don't know whether there is any materiality to the complaint or not. I haven't seen it. I better take a look at it.

Maybe you could tell me, Mr. Grodsky, why this complaint is admissible as of now in this case.

Mr. Grodsky: Well, I will make one more statement for the record that the witness was given judgment in the lower court and the court directed that he be reinstated in the union. The witness further will testify that when after the date of the letter of June 8, 1953, he was removed from the Local 12 out-of-work list and put in the out-of-work list of Applicants and Others and that he has remained there to this date.

Trial Examiner: That doesn't show why the complaint [59] itself is material. I think that as of

(Testimony of Robert A. Holderby.)

now the two letters are material but I don't think the complaint is material. I will sustain the objection to the complaint while admitting the two letters in evidence.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification was received in evidence.)

Mr. Grodsky: I propose a stipulation to counsel that under date of February 3, 1954, Holderby was——

Mr. Sokol: I will stipulate that this is a true copy of minutes of the court.

Mr. Grodsky: Shall I offer it as minutes of the court?

Mr. Sokol: That is what it is, that is all it is.

Mr. Grodsky: I thought we'd just stipulate to the conclusion.

All right, then I will offer—I have had marked as General Counsel's 7 a photostatic copy of the minutes of the court, Superior Court, Los Angeles County, and I'm offering it in evidence.

Trial Examiner: Any objection to that?

Mr. Sokol: No.

Trial Examiner: It may be admitted.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 7 and was received in evidence.)

Trial Examiner: If that is to become intelligible at all, I guess my ruling on the complaint is wrong.

Mr. Sokol: Well, I was think that, in a sense, I was going to urge that the Board doesn't have jur-

(Testimony of Robert A. Holderby.)

isdiction as I alleged in my answer and it might be germane there to have the complaint in. You see, my position is that the State Court took jurisdiction on the ground that no commerce was involved and he recovered judgment in the State Court for this very precise thing that we are confronted with here.

Trial Examiner: I see. Well, I will reverse myself on the complaint and allow that in evidence.

Mr. Grodsky: Mr. Examiner, in connection with the complaint, I only have a single copy of that and I'm wondering if it would be practical to request you to waive the duplicate of the complaint?

Trial Examiner: I don't think so, I think you better get a duplicate just as everybody else has to.

Mr. Grodsky: All right.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Grodsky): Were there any period of time when you had registered for employment with Local 12? A. Yes.

Q. And during those periods, do you know what list your name was put?

Mr. Sokol: Objected to as calling for the conclusion of [61] the witness.

Trial Examiner: If he knows he may answer.

Q. (By Mr. Grodsky): Just answer yes or no.

A. Yes.

(Testimony of Robert A. Holderby.)

Q. How do you know on what list your name was put?

A. I saw with my own eyes the name, Robert A. Holderby, on the membership list of Local 12, journeyman classification.

Q. Now, at that time in question, was there a single list on which there were listed members of Local 12 and, under that, Applicants and Others?

A. I saw two lists, one for 12, or, I should put it, members of the International Union of Operating Engineers which would be, apparently, 12; 12-D, which are the survey part of the International Union of Operating Engineers; the other list was limited to Applicants and Others which included the transfers.

Trial Examiner: Now, all of you gentlemen are talking about these out-of-work lists, are you?

Mr. Grodsky: That is correct.

Q. (By Mr. Grodsky): In other words, Mr. Holderby, there is one list?

Mr. Sokol: Why repeat his testimony? He has testified——

Mr. Grodsky: I'm trying to clarify.

Mr. Sokol: I think he testified very clearly.

Mr. Grodsky: Good, I'm happy to hear that.

Q. (By Mr. Grodsky): And during the period in question which is between March and June of 1953, you observed that your name appeared on the list of members? A. Yes.

Q. Now, did there come a time after June of

(Testimony of Robert A. Holderby.)

1953 when your name no longer appeared on that list? A. Yes.

Q. When did that take place?

A. The following list of June 8, 1953.

Q. And what list did your name appear at that time?

A. The Applicants and Others list.

Q. Did you discuss that with anyone?

A. At the time, the particular time after June of '53 when I came in to put myself on the out-of-work list, I was given another information card by one of the girls of whom I don't remember her name, gave me the card and I said, "What am I to do with this?"

And she said, "Fill it out."

And by that, there was an implication that I no longer was going to work for Local 12.

Mr. Sokol: I have to move to strike the latter part.

Trial Examiner: I will allow to strike the last part of that answer, the implication.

Q. (By Mr. Grodsky): Mr. Holderby, did you at that time or any subsequent time ever discuss with any representative of [63] Local 12 where your name should be, whether on the members or Applicants and Others list?

A. No, I don't, I can't say that I did. I did query several times as to whether my name was—the list was posted and after the date of July, 1953, my name remained at the top of Applicants and Others list until June of 1954.

(Testimony of Robert A. Holderby.)

Q. Now, prior to the time that your name was on the Applicants and Others list, what was the situation with reference to job referrals? How many job referrals did you have, or estimate it in some fashion?

A. Would you read that, I didn't get the latter part of that question.

Trial Examiner: Let the reporter read it.

(The question was read.)

The Witness: Did you say from the time I received the first letter, the letter of March, ordering reinstatement? I believe you have a list that would be more valid than my recollection.

Mr. Grodsky: May we be off the record?

Trial Examiner: All right, we will go off the record.

(Discussion off the record.)

Trial Examiner: I will call the hearing to order, please.

Mr. Grodsky: I have shown the witness General Counsel's 8 and he has examined it and I will now offer General Counsel's 8 [64] in evidence.

Mr. Sokol: No objection.

Mr. Grodsky: And since it has an original and has some written material, I will ask whether the Examiner will waive a copy as I can have it photostated.

Trial Examiner: You better have it photostated. I understand that is a letter from the union and is being admitted as admission——

Mr. Grodsky: Part of a letter and has the

(Testimony of Robert A. Holderby.)

working record of Robert A. Holderby from 9-29-51 to 8-20-53.

Trial Examiner: There being no objection, it will be admitted in evidence.

(Thereupon the document above-referred to was marked General Counsel's Exhibit No. 8 and was received in evidence.

[See pages 157-160.]

Q. (By Mr. Grodsky): In examining this, I notice on June 9, 1953, it indicates that you were referred to G. J. Payne, P-a-y-n-e, and the next notation is on the same date, 6-9-53, and indicates R.I. meaning reported in.

Will you tell us how long you worked for G. J. Payne?

A. I worked for G. J. Payne for the approximate period of 15 days. I was not actually employed by G. J. Payne. It was a piece of equipment owned by G. J. Payne and was referred by the union but I was actually working for the County of Los Angeles.

Mr. Sokol: Wait, before you go any further, I think the [65] Trial Examiner would like to know. Is he challenging the authenticity of this record?

The Witness: Yes.

Mr. Grodsky: Only insofar as that appears to be a clerical error there. It is quite obvious if he is sent out on a job he wouldn't report in on the same day.

Mr. Sokol: Oh, yes, it would be. If he is challenging it, it goes to credibility. We will produce

(Testimony of Robert A. Holderby.)

evidence this is a true record. We wouldn't give you any inaccurate record on that.

Mr. Grodsky: I wouldn't expect you would deliberately give us an inaccurate record.

Q. (By Mr. Grodsky): When was it after you were first sent on the G. J. Payne job that you reported in for work?

A. May I make, give an explanation of what led up to that particular job referral?

Q. No, it's not asked for. Just tell us when was it after the G. J. Payne job that you reported back in as available for employment?

A. I believe it was the latter part of June because I worked on that particular job for a period of approximately 15 days as previously stated.

Q. Now, after the G. J. Payne job, when is the next time after that you received a work referral from the union?

A. I was given a work referral for part of July, 1953, which [66] was canceled. And that was the last referral that I got from the Operating Engineers Local 12 until June of 1954.

Q. During the period of July of 1953 to June of 1954, did you have occasion to visit the offices of Local 12? A. Yes.

Q. On one or more than one occasion?

A. Many occasions.

Q. And on any of these occasions did you ever inquire as to your status of job application?

A. I did.

(Testimony of Robert A. Holderby.)

Q. And from whom did you inquire?

A. The girl at the window. After the time, after I believe, it was January of 1954 when the work lists were taken away from, for public exhibit.

Q. Now, between June of 1953 and January of 1954, is it your testimony that the out-of-work lists were available for people to see?

A. Up until approximately January, I believe, 1954, the work lists were available for the general membership to see, were posted in a case, a glass enclosed case.

Then, after, I believe, January of '54, the out-of-work lists were taken down and, if you wished to find out your status on the out-of-work list, you had to make a personal request from the girl behind the window.

Q. During the period before January of '54, did you have [67] occasion on one or more than one occasion to see what your position was on the out-of-work list? A. I did, yes.

Q. Will you describe where your name appeared on the out-of-work list?

A. Approximately in the middle part of July, I believe, until the last time that I saw it posted, my name was at the top of the Applicants and Others list and remained there, to my knowledge, until June of 1954.

Q. After January of 1954 when the lists were removed, did you make any inquiry as to where your name was? A. Yes, I did.

Q. From whom did you make such inquiry?

(Testimony of Robert A. Holderby.)

A. The inquiries were requested of the girl behind the wicket.

Q. When you would make such inquiry, what would she show you?

A. She would merely refer or state, "You are still at the top of the Applicants and Others list."

Q. During the entire period in question when you testified your name was at the top of the Applicants and Others list, did you have any job referrals between, say, the middle of July, 1953, and the first of June of 1954?

A. As I stated on the copy admitted as evidence, there were two calls that were made both of which I was not available. I was not at home when the calls were made. However, on one, [68] when I did call back, the union, and they asked me if I wanted to go out on a Barber Green, I believe that was in August of '53, and I stated at the time, no, that I didn't want the job because of physical infirmity of my foot. I was physically unable at that particular date.

Q. Did you have any other inquiries about jobs from the union, or referrals?

A. No, that was the last one until June of '54.

Q. Do you know what list you are on now with reference to the out-of-work lists?

A. No, I don't. I do know this——

Mr. Sokol: Wait now, that is a voluntary answer. I don't think we should clutter up this record. I'm going to have enough cross examination as it is.

(Testimony of Robert A. Holderby.)

Trial Examiner: I think he is entitled to tell us his story.

Mr. Sokol: It was a voluntary answer. No question pending.

Mr. Grodsky: He was simply going to elaborate.

Trial Examiner: As I understand, if this is an elaboration of the last answer, you may proceed.

The Witness: In the past three weeks, three to date tomorrow, I have been on the out-of-work list. In that period of time I have sat in the hall innumerable days waiting for job referrals. Men have come in that have been [69] on application or have been transferring from other unions that have been slated to go out or have been referred to other jobs over and above me. They have been going around——

Mr. Sokol: Move to strike all of that as a conclusion of the witness.

Trial Examiner: I'm going to allow that motion because the question is what list he was on.

Mr. Grodsky: That's right.

Q. (By Mr. Grodsky): After June of '54, did your situation with reference to job referral change? A. Most dramatically.

Q. Will you explain in what way it changed?

A. The date, specifically, alludes me but it was the fore part of June, 1954, I was finally referred to a job for Ball & Harms in Palmdale, California, operating a W.D. 10 pulling a wobbly wheel roller. Then, shortly after that, I was referred to another

(Testimony of Robert A. Holderby.)

job as an oiler for Macco Corporation on a Manitowak crane.

The first job lasted six days, the second job lasted approximately five weeks. After that I was again referred to another job for McDonald & Cruse and, the interesting part of this particular job was, I was scheduled to go on a screed. I was a screed operator but there was a confusion. They thought at the hall when they dispatched me that it was black top or asphalt screed work. Upon arriving at the job, I realized [70] that it was not black top I was going to work with but it was concrete. It was a concrete spread. I asked the superintendent, inasmuch as I traveled a distance of some 20 miles, that if I could make an attempt to break in on the equipment because I had never operated this particular piece of equipment before but I had seen it in operation and he said, "Yes, go ahead."

So he gave me the opportunity and I worked that until they finished the particular spread that I was on and then I was transferred to two other jobs on that particular job.

That job terminated. I was sent out for a day and a half to Schroeder Company, an asphalt paving company. I worked there for approximately a period of five weeks until the job terminated three weeks ago tomorrow. That was the last referral I was made.

Q. Between the period of June of '54 and three weeks ago, how long a waiting period did you have between jobs?

(Testimony of Robert A. Holderby.)

A. Relatively short. However, I believe there was, the longest period was approximately a week. This is an approximate guess, now.

Mr. Grodsky: No further questions.

Cross Examination

Q. (By Mr. Sokol): Mr. Holderby, how old are you? A. 30.

Q. From your distinguished language that you used on the witness stand, I presume that you are a college graduate? [71]

A. I have college background, yes.

Q. And actually, you had never intended to follow the work of the Operating Engineers prior to coming to Los Angeles?

A. That I believe is an assumption on your part.

Q. All right, might be erroneous but let's go on. When did you arrive in Los Angeles?

A. Approximately 1933.

Q. And what kind of work did you do then?

A. I was a student, 1933.

Q. Well, I'm an old timer. Because, that was the height of the depression.

When did you stop being a student in college, so to speak, or high school or whatever you went to?

A. I was a student relatively up until 1950, with a fraction of time.

Q. I see. I have to be more specific. You were going to school in 1933. What kind of school?

A. Grammar school.

(Testimony of Robert A. Holderby.)

Q. I see. Then you went to high school, I presume?

A. During high school——

Q. About when did you get out of high school?

A. 1940.

Q. Did you go to college?

A. Glendale City College. Then I went in the Service.

Q. Then you went in the Service. When did you get out? [72] A. '46.

Q. What did you do then?

A. I went to the University of Illinois.

Q. When did you get out of there?

A. '48.

Q. Then what did you do?

A. University of California of Los Angeles, '48 to '50.

Q. 1950, oh, yes, 1950. Did you go down to the Engineers?

A. I have been in construction work.

Q. You answer my question. In 1950 what work did you go on?

A. I was working in the construction field.

Q. For whom?

A. Ellis Construction Company.

Q. What were you doing for Ellis?

A. I was doing a little bit of everything.

Q. All right, what did you do?

A. I have done oiling, even prior to that, many, many years prior to that. Dates back.

Q. What did you do for Ellis?

(Testimony of Robert A. Holderby.)

A. I had oiled, I had operated some, I had worked in the office.

Q. Doing paper work? A. Yes, sir.

Q. Were you a member of the Engineers Union when you were an oiler down at Ellis Company?

A. I had made an application for oilers in 1948 when working summers.

Q. But you didn't complete that?

A. No, because I went back to school.

Q. When you worked for Ellis, were you a member of the Engineers Union? A. No.

Q. You knew Ellis was signed to a union agreement? A. Yes.

Q. What union were you a member of on that job? A. I was not.

Q. How long did you work for Ellis?

A. Well, if you stretch it over a period of years, since approximately '39.

Q. Steadily, I don't get—

A. I have worked, this fellow Ellis is a personal friend of mine. I worked for his father when I was a youngster starting about '39.

Q. Since 1950 you have worked for Ellis how long? A. For periods of time.

Q. Off and on? A. Yes.

Q. Do you mean to say you could go to work for Ellis at any time, more or less?

A. I had in the past, yes.

Q. I see. [74]

A. I was working on and off while going to school from '48 to '50.

(Testimony of Robert A. Holderby.)

Q. Off and on, in these periods when you were not sent out by the Engineers Local 12, could you have gone to work for Ellis?

A. When is this, now?

Q. In '53 and '54 when you didn't have jobs assigned through Local 12, you could have gone to work for Ellis?

A. I don't know, I never made a request.

Q. You never attempted? A. No.

Q. I see. Ellis, is he in the same business?

A. He's a contractor.

Q. A contractor handling all this kind of stuff, screeds and caterpillars, all that kind of work that engineers have? A. Yes.

Q. And now, to get down to the chronology, in 1950 you worked for Ellis, and when did you cease in 1950 working for Ellis? A. August.

Q. And during that time you did paper work in the office and some oiling?

A. That particular year it had been mostly office work. I did a little bit of laboring.

Q. Then in 1951, what did you do? [75]

A. I went to work for Ellis again in the office.

Q. All right, in 1952 what did you do?

A. That was a period of time that I was working in the field as operating engineer.

Q. For whom?

A. Various contractors as listed on the work record.

Q. I see. Now, the only work that you have done in the field of the jurisdiction of Operating

(Testimony of Robert A. Holderby.)

Engineers Union in that particular kind of work is reflected on that Exhibit 8, is that right?

A. With the exception of doby money that I paid in 1948 or permit money.

Q. All right, you have answered the question. I want to come down to the crux of this thing.

Mr. Sokol: I think the main period is from August of '53 to some date in '54 that he claims he wasn't referred out. What is that period?

Trial Examiner: June of '54.

Q. (By Mr. Sokol): June of '54. During that period you were working for an organization called Democracy for Labor Unions, isn't that true?

A. I was not working for it, no.

Q. Weren't you selling memberships in that organization?

A. I was not selling memberships.

Q. Did you receive any money from that organization? [76] A. No, no.

Q. Did you receive any remuneration of any kind—— A. No.

Q. ——wait, you haven't heard my question. You are way ahead of me.

Listen, between August of '53 and June of '54, did you receive remuneration from anyone for work? A. No—wait, let's go back.

Q. You answered the question.

A. Wait, now, did you say——

Trial Examiner: August of 1953 to June of 1954.

The Witness: Yes, I have to retract and say,

(Testimony of Robert A. Holderby.)

yes, I did. I was trying to sell trucks for a period of time.

Q. (By Mr. Sokol): Well, we got that much. Who were you selling trucks for?

Mr. Grodsky: I'm going to object to that if the Examiner please, I don't see the materiality to anything in this.

Mr. Sokol: It goes to our defense definitely. I don't want to reveal our whole case at this time. We are going into his work record. You went into it and I'm showing between August of '53 and June of '54 what work he was doing.

Trial Examiner: I can see how it can possibly be material. I will overrule the objection.

Q. (By Mr. Sokol): What concern was that for?

A. Two, one, Courtesy Chevrolet and the other was Midway [77] Motors.

Q. Courtesy Chevrolet is located where?

A. Corner of Ninth and Western.

Q. When did you go to work for Courtesy Chevrolet?

A. Approximately September—wait——

Q. Got to be exact, try to be exact.

A. I'm trying to be exact.

Q. All right.

A. Approximately, I would say, August, it was in August of '53.

Q. All right, in August of '53, you went out to Courtesy Chevrolet and who did you talk to out there? A. Specifically?

(Testimony of Robert A. Holderby.)

Q. Yes.

A. I talked to Ed Fitzgerald and Bob Hamilton, the manager and assistant manager.

Q. Did Hamilton hire you? A. Yes.

Q. What did you do there?

A. I was selling.

Q. Selling automobiles on the floor?

A. No, I didn't take any floor time.

Q. You were on the used car lot? A. No.

Q. What——

A. New cars but I was hustling my own, I didn't sell on [78] floor time.

Q. So you took a job?

A. Well, commission.

Q. And Mr. Hamilton was your superior?

A. Yes.

Q. And you worked how long for Courtesy Chevrolet?

A. I would say latter part of October.

Q. Could it have been later than that?

A. I don't believe so.

Q. Just the latter part of October of '53?

A. Yes.

Q. And why did you leave that employment?

A. I was fired because I didn't sell any cars and trucks.

Q. During that time, you didn't go down to the union hall? A. Oh, yes——

Q. Who did you——

Mr. Grodsky: Please wait until he finishes his questions.

(Testimony of Robert A. Holderby.)

Q. (By Mr. Sokol): You went down to the union hall? A. Yes.

Q. Who did you talk to between August of '53 and the latter part of October of '53 about any work at the union hall?

A. I talked at the window. I had gone down there.

Q. Who did you talk to at the window?

A. Specifically, there are many girls who are at the window and to remember one individually, I couldn't say. [79]

Q. Mr. Holderby, you were very friendly with the officers and employees of the local?

A. Yes.

Q. As a matter of fact, the officers of the local tried to get you a job in Washington, D.C., didn't they, about that time?

A. That is a valued judgment.

Q. Sir, will you answer my question, isn't it a fact that an officer of the local at your request tried to get you a job in Washington, D.C., about that time?

A. It is hearsay because they didn't. They just merely talked about it, there was not concrete evidence.

Q. Who did you talk to?

A. Specifically?

Q. Yes. A. Bronson.

Q. Who——

A. I talked to Carroll. That was prior to August of '53 because Bronson asked me to leave the hall

(Testimony of Robert A. Holderby.)

as did Brother Bruett. They virtually kicked me out of the hall and told me to get out and not come back.

Q. You are still not answering my question. I have asked a simple question. Don't you remember when you left Courtesy Chevrolet that you came down to the hall and talked to them about getting you a job back in Washington, D.C.?

A. No, that was not true. [80]

Q. There was no mention made?

A. There was not between that period of time.

Q. You are louder than I am now.

A. Because in that particular time there was no fraternization between the then incumbent officers and Robert Holderby.

Q. When was it that you last fraternized with them?

A. Last May, fraternization, specifically, was dated May, approximately May 14, the date I had a long conversation with Bill Carroll and Ralph Bronson, the date that——

Q. Well, that fixes the time—when was your best judgment when you asked them to try to place you in Washington, D.C.?

A. All of that had transpired at the beginning of, or immediately after the elections of 1952, starting in November of '52 and the period of the correspondence when I was in the hospital. I had corresponded with Bill Carroll and he——

Q. When were you in the hospital?

A. I was in the hospital in the latter part of

(Testimony of Robert A. Holderby.)

'52 and—'53 and, wait a minute, now, '52 and '53, that's right.

Q. What period were you in the hospital?

A. December and January. And I have a letter to the effect that Bill Carroll was interested in my health and so forth and the fact that he had said that he had talked to the assistant secretary of labor out here that had been with the State Federation.

Mr. Grodsky: Haggerty? [81]

The Witness: No, no, assistant secretary of labor.

Q. (By Mr. Sokol): In the Federal Building?

A. Yes, Mashburn. And Bill Carroll also was supposed to have presented a resolution that the State Federation of Labor was going to endorse me for a position in the Labor Department. Also, that when I talked to Bronson, Bronson said that he would write that letter to Maloney in Washington, or something to that effect, and probably try through that means of getting me situated in that employment.

Q. You were interested in a white collar job, so to speak? A. Yes, specifically, on that.

Q. Now, Mr. Holderby, it is a fair statement, isn't it, to say that after October, latter part of October of '53, that you turned down work from Local 12? A. Of '53?

Q. Yes, after October of '53?

A. Most emphatically not, most emphatically not.

(Testimony of Robert A. Holderby.)

Q. I thought you testified on direct examination that you were not available?

A. That was in August of '53.

Q. In August of '53.

A. That was the last request or referral that was offered me. That is stipulated, I believe, by this——

Q. Isn't it—take it easy, relax. Isn't it the truth that one of the, that you got a call from a woman, a woman's [82] voice, said they was from Local 12 and this was in October of '53, and told you that there was work available and you said you had another job? A. No.

Q. You don't have to shake your head or throw any act, just answer yes or no.

A. I said no.

Q. Isn't it a fact that you told the people down at the union hall that you had another job when you had these automobile jobs, isn't that the truth?

A. The only time——

Q. Just answer yes or no.

Trial Examiner: You got to answer out loud, Mr. Holderby.

The Witness: I would say no.

Q. (By Mr. Sokol): After the Courtesy Chevrolet job, you went to work for Midway Motors?

A. Yes.

Q. When did you go to work for Midway Motors?

A. Fore part of November or latter part of October.

Q. Right after the Courtesy Chevrolet job you

(Testimony of Robert A. Holderby.)

went out and looked for work with another automobile agency? A. Yes.

Q. You went to work for Midway Motors?

A. Yes.

Q. A Ford outfit? [83] A. Yes.

Q. All right, you went from Chevrolet to Ford, you went up the scale? A. Yes.

Q. You went to Midway Motors in November of '53?

A. Latter part of October or fore part of November.

Q. And you went to work as a salesman, is that right? A. Yes.

Q. How long did you work for them?

A. Not very long, they fired me, too.

Q. They fired you, too. When did they fire you?

A. I don't remember the specific date there. It was before December.

Q. Of '53? A. Yes.

Q. And then you went out and looked for work where? A. Union.

Q. Did you go elsewhere looking for work?

A. I had gone out, yes, because——

Q. Where did you go?

A. I can list a series of employment agencies.

Q. Would you do that?

Mr. Sokol: That has nothing to do with back pay, only goes to the issue.

Trial Examiner: I think I can see what you are driving at. [84]

(Testimony of Robert A. Holderby.)

Q. (By Mr. Sokol): Where did you go for your job?

A. I wish I had a list of the various employment agencies.

Q. I don't want to shake your memory too much or otherwise cause you too much trouble.

A. I was filing at that particular time unemployment insurance.

Q. Wait, now, and answer. Look, after the Midway Motors job, you went out looking for work?

A. I filed for unemployment insurance.

Q. All right, we all do that. You went looking for work, you had to do that? A. Yes.

Q. You went down to automobile agencies?

A. Only one other.

Q. Which was that?

A. Another agency on Western, Ford.

Q. You don't recall the name of that?

A. No.

Q. What was the nature of the other businesses where you went seeking work?

A. I tried to get any available work.

Q. What was the nature in general of the business?

A. I tried selling jobs, I had tried to get a job in a shop.

Q. It was white collar?

A. No, no, this other shop work was not white collar.

Q. What was that job? [85]

A. Working in a foundry.

(Testimony of Robert A. Holderby.)

Q. You knew you didn't know anything about that?

A. Well, it was common labor, paid \$1.55 an hour.

Q. Did you go out to any firm that handled heavy duty equipment like cranes and shovels and so on and seek work directly through those concerns? A. No.

Q. You didn't do that at all? A. No.

Q. And so it is a fair statement that you made no effort to get work in the field of operating engineers?

A. On the contrary, I made an application with one employment agency that hires timekeepers and so forth in the construction field.

Q. I see. That answers the question.

A. I wanted that——

Q. You wanted a timekeeper's job?

A. Well, anything pertaining to the construction field which I was fairly familiar with and I had been on file with that particular agency for a period of several months.

Q. Never once did you go to an employer directly that had contracts with—strike that.

You knew that most of the industry had contracts with the Operating Engineers on heavy duty equipment?

A. I will say this, that a couple of my friends said that [86] they knew contractors that they would ask them for employment for me.

Q. Did you go down there and ask for it?

(Testimony of Robert A. Holderby.)

A. They were going to make an entree for me.

Q. Did you personally, Mr. Holderby, make any effort to get work directly in the industry?

A. Yes.

Q. Who did you see?

A. I went down to Griffith Company—well, yes, Griffith Company.

Q. Who did you see at Griffith?

A. Tom Oglesby.

Q. What did Oglesby tell you?

A. He said not much work right now.

Q. What job were you looking for?

A. Roller cat.

Q. No work available? A. No.

Q. That is the extent of it?

A. I also went to Haddock.

Q. Same answer?

A. Yes, virtually. I went to Webb & White.

Q. Same answer? A. Yes.

Q. Did you know, Mr. Holderby, that some of the employers [87] that you had worked for in the past who you had been referred to through the union had written into the union criticizing you as a workman? A. I certainly——

Q. Answer that.

A. Yes, yes, may I elaborate on that more for a moment?

Q. I'm not asking you to elaborate.

A. I would like to.

Q. It is getting late in the day.

(Testimony of Robert A. Holderby.)

A. Something specifically that has bearing on that.

Trial Examiner: I think your counsel may ask you that.

Q. (By Mr. Sokol): Mr. Holderby, during all of that time you were also doing outside work for the Democracy for Labor Unions?

A. That is an association for democracy and unions, incorporated.

Q. When was that organized?

A. That was organized in July of '53.

Q. And so from July of '53 you took an active part in that particular association?

A. I have.

Q. And that association, was that formed to dislodge the officers or change the administration of the Operating Engineers Union? A. No. [88]

Q. What was the purpose of that setup?

A. I believe the title is self-explanatory.

Q. I don't know, you know how those things are.

A. Its an organization contrived by a group of men who are interested in democracy in union, a democratic function where the usurpation of power by a hungry few could be controlled in some degree by stimulating a desire for membership.

Q. Then you went out and solicited members in that organization?

A. At any opportunity I had, yes, I did.

Q. Did you devote your daytime hours to that?

A. No.

Q. Only at night?

(Testimony of Robert A. Holderby.)

A. Any particular place, I was not being paid for soliciting. I would talk to people who were members of the unions and, in our conversation, they would perhaps say something and I would say, "Perhaps you would like to become affiliated with an organization that is interested in democracy in unions." And we would talk, like I'd sit in a restaurant and I solicited.

Q. Im not really interested. I thought it was a job. A. No, no.

Q. As a matter of fact, I think the title appropriate, but to go on with this—let's see, did you ever handle a grove oiler? [89] A. A who?

Q. A grove oiler?

A. No, never heard of one. Grove oiler.

Q. Were you a roller operator? A. Yes.

Q. What is a B. G. Spreader?

A. Barber Green.

Q. Were you ever on one of those?

A. Yes.

Q. Did you ever handle any tractors?

A. Yes.

Q. What kind of tractors?

A. D-6, D-2, D-4, D-8, HD-7, HD-14.

Q. Where did you function as a roller operator, what job was that?

A. I worked for Southwest Paving, I worked for Griffith Company, I worked for Osborne Company, I have worked for G. J. Payne, worked for Vernon Paving, I have worked—there's several others that I worked for.

(Testimony of Robert A. Holderby.)

Q. What was that, for a day or two?

A. No.

Q. What was the longest you ever worked?

A. I guess Griffith Company was the longest I ever worked for.

Q. How long was that?

A. Approximately two and a half months, intermittently, [90] right after the, right after the strike of 1952.

Q. Not just on the roller?

A. Yes, and cat and Barber Green. They changed me off. The last job I had was terminated because of lack of work. The people were willing to write a letter of recommendation because——

Q. The last job you worked—let's clear the record a bit.

A. The last employer I worked for was willing to give a letter of recommendation for my quality of work.

Q. I don't want to have to thumb through these records tonight, Mr. Holderby, and I know you don't want me to work overtime. I try to be fair with you. You know we got this exhibit up, this Exhibit 8, and I told them to be very accurate and it says, G. J. Payne, 6-9-53 and 6-9-53, R. I. Reported In. A. That is an error.

Q. Why do you make that statement without having records of your own?

A. Well, if you wish we may go to the County because they made my payroll for me. They paid me and I was operating a G. J. Payne piece of

(Testimony of Robert A. Holderby.)

equipment that was leased to the County for a period of approximately 15 days over on the east part of Los Angeles.

Q. But you worked for Payne before?

A. Yes, a one day job.

Q. Well, I will have to check that. [91]

Trial Examiner: Let me ask a question, where that exhibit says "R. I." it means reported in. Does that mean he reported to the employer or does that mean that he reported back as being unemployed?

Mr. Sokol: That's right, reported in on the out-of-work list.

Trial Examiner: All right.

Mr. Sokol: So that is the only one that he says is in error, this Payne job.

The Witness: The others could be in error but that is, specifically, I know because I remember the last job I had as operating engineer.

Mr. Sokol: Frankly, I have to check the record if I'm going to do any further questioning. If he is going to be here tomorrow, I don't want to hold you, if you are going to leave, I am just going to take chances. May I have the opportunity if he appears tomorrow to ask a few questions? I'm not insisting.

Trial Examiner: Mr. Holderby says he will be here.

Mr. Sokol: I have nothing further.

Mr. Grodsky: May I have a short recess?

Trial Examiner: All right, we will take a five-minute recess.

(Testimony of Robert A. Holderby.)

(Short recess taken.)

Trial Examiner: I will call the hearing to order, please. [92]

Q. (By Mr. Sokol): Mr. Holderby, during all of this time that you have related, did any officer or agent, male or female or otherwise, ever tell you that you were not going to be assigned out to work because of your union activity on, otherwise?

Mr. Grodsky: I will object to that as immaterial.

Trial Examiner: Overruled. You may answer.

The Witness: That is a lurid question, a lot of history behind an answer of yes or no.

Q. (By Mr. Sokol): Answer my question, did any representative of the union at any time tell you that they were going to see that you were not given job referrals, you can answer that yes or no.

A. I can't recollect.

Mr. Sokol: That is all.

The Witness: One way or the other.

Trial Examiner: You got any redirect examination?

Mr. Sokol: I have one more on that list. Where is that list that I gave you back, Exhibit 8?

Mr. Grodsky: I had left it with the girl.

Q. (By Mr. Sokol): After June of '54, you say when you came back to the union, they sent you out on jobs again?

A. When I came back at what period of time?

Q. After June of '54?

(Testimony of Robert A. Holderby.)

A. I had been back there for a long time looking for employment. [93]

Q. My question——

A. I sat in the hall for months.

Q. Wait, now, you are trying to volunteer an answer. My question is, after June of '54, did you get any referrals out of the union and go out on jobs?

A. Yes, sir.

Mr. Sokol: That is all.

Trial Examiner: All right.

Redirect Examination

Q. (By Mr. Grodsky): Mr. Holderby, you were asked about your employment with Ellis. Now, when was the last time that you worked for Ellis?

A. Terminated employment August, 1951.

Q. Now, Mr. Sokol asked you whether in 1953 and 1954 you made any application for employment with Ellis and you answered that you did not, is that correct?

A. That is correct.

Q. Mr. Sokol further asked you whether you could have worked for Ellis during that period. Do you recall being asked that question?

A. Well, yes.

Q. What was your relationship with Mr. Ellis at that period?

A. For employment, it was rather adverse. I could not have been reemployed by Ellis.

Q. When you say you could not have been re-employed, what [94] do you mean by that?

(Testimony of Robert A. Holderby.)

A. My tenure of employment was severed on my own volition but under adverse conditions.

Q. In other words, you left with it not in a friendly atmosphere? A. Yes.

Q. And under those circumstances you felt that you could not make a successful application for employment? A. Yes.

Q. Now, you further testified that you are aware that some employers have written to the union adversely concerning your work. Do you recall that testimony? A. Yes.

Q. When did you first become aware of such criticism of your work by former employers?

A. Specifically in December at the trial in the Superior Court of '53. [95]

* * * * *

The Witness: As I stated, I visited Tom Oglesby and asked about employment and in that conversation, I asked him, I said, "Has anyone been around here talking to you about me?"

And he said, "Yes, Bill Carroll was out here," and he said, "Bill wanted to know what kind of an operator you were."

And I said, "Well, what did you say?"

And he replied, he said, "Well, I told him that you were satisfactory and that you quit on your own volition, that [97] because of your physical inability at the time, that you quit."

That was the particular conversation at that particular time.

(Testimony of Robert A. Holderby.)

Q. (By Mr. Grodsky): When did that conversation take place?

A. That was sometime around July, July or August of '53.

Q. During the time that you have worked as an employee referred by Local 12, have you had, have your employers complimented you with reference to the quality of your work?

A. Yes. In fact,——

* * * * *

Q. (By Mr. Grodsky): During the period of your employment, have any employers criticized your work? A. Yes.

Q. And have any of them discharged you or let you go because you were incapable of doing the work that you were assigned to do? [98]

A. Yes.

Q. Did that happen on one or more than one occasion? A. More than one occasion.

Q. Can you recall the number of occasions?

A. Quite a few, yes.

Q. That you were discharged?

A. For one reason or another and if I might cite this, if it's admissible, it's a peculiar problem to go out and satisfy a contractor or his foreman or perhaps a superintendent. I believe we have three witnesses who are journeymen of the trade who can vouch for my statement now that you can go out on a job, say, you skin cat, you last a half day or perhaps one hour and be booted off the equipment, sent down the road.

(Testimony of Robert A. Holderby.)

You'd be cleared out to work for another contractor and work for a period perhaps two days to six months or a year. It's different to satisfy all employers in the same way. It might be the shade of your hair, the cut of your hair.

Mr. Grodsky: I have no further questions.

Recross Examination

Q. (By Mr. Sokol): I think what is important, though, was that on particular types of equipment that you were unsatisfactory, what type of equipment? A. No, because I have——

Q. Now, wait, let's get specific. Give us an example of an employer that fired you for sloppy work. [99]

A. Vernon Paving Company.

Q. What kind of equipment?

A. I was on a roller.

Q. Why were you canned off that job?

A. Because I jumped up to the curb with a roller.

Q. Incompetent work?

A. No, inefficient equipment, poor repair.

Q. Give me another employer that you were canned from.

A. I was canned, I was canned on a push cat.

Q. How did that happen?

A. Because I was carrying my blade too high and cutting the rubber. That was an error on my part.

Q. Give me another example.

(Testimony of Robert A. Holderby.)

A. I was canned off of a D-4, later at the regret of the operator, I mean, of the foreman.

Q. Where were you canned off of a D-4?

A. When I got on the D-4, I had not been on one for a long time. I was not doing the work that I should have the first day and I kept doubling and worked for three days for the company and at the end of the first day they made a request for another man that couldn't fill it for three days. Then when they filled the job he said, "I'm sorry I called the other fellow in. You are doing much better than when you first started."

Q. Give me another example where you didn't handle the [100] equipment right. C

Mr. Grodsky: That assumes facts not in evidence.

Q. (By Mr. Sokol): If one occurred.

A. On a screed job there was, because of my feet, I couldn't stand on my feet too much and I was gripping off on the control of the particular piece of material so I was fired there.

Q. I think we have had enough examples. Thank you very much.

Redirect Examination

Q. (By Mr. Grodsky): Now, when was it that you were discharged by Vernon Paving?

A. I was discharged twice; once for screed and once for the roller. Screed was the feet situation and the other one was because of disrepair of the system.

(Testimony of Robert A. Holderby.)

Q. I'm not asking why, I'm asking when.

A. That was in '53.

Q. After the time you were discharged from Vernon Paving on the roller job, did you have occasion to operate a roller for other employers?

A. Yes.

Q. On one or more than one occasion?

A. More occasions.

Q. Did you operate it satisfactorily?

A. Obviously because I was not fired.

Q. Did you have occasion to operate screeds satisfactorily for other employers after the occasion where you were fired from [101] that job?

A. Yes.

Q. And does the same answer hold true about the push cat?

A. I have only been on one push cat job.

Q. That was the only one and you were fired on it because of the rubber? A. Yes.

Q. And what about the D-4, did you work on other D-4 jobs? A. Yes.

Q. Subsequent to that time?

A. Prior to and subsequent to.

Q. Subsequent is what I'm interested in.

A. Yes.

Q. Did you work satisfactorily subsequent to that? A. Yes.

Recross Examination

Q. (By Mr. Sokol): Mr. Holderby, I know the Trial Examiner wants to know something about

(Testimony of Robert A. Holderby.)

that case, particularly, when a man is a good operator, he will go to work for Griffith, or one of the contractors, and be on the payroll fairly permanent? A. No.

Q. Well, he wouldn't go out to the one and two day jobs like you had and then get off the job, isn't that a fair statement?

A. I can cite during one particular period there where every [102] job that I was referred to was a one or two day job.

Q. Exactly.

A. Oh, no, they were of short duration, now.

Q. You never had a permanent job, what you would call a permanent job with any construction company?

A. I imagine, that is difficult to try to pin me down because——

Q. Answer the question. Did you have, ever have a fairly steady job with any contractor at any time? A. Yes.

Q. What contractor? A. Ellis.

Q. We know why. But any other contractor?

A. Well, the companies that I worked for, I was cleared out of the hall, two of them, I began the job, I terminated the job. I worked to completion.

Q. Here is what I'm getting at, Macco, for instance, you know they have lots of heavy equipment? A. Yes.

Q. And they have a crew down there?

A. Yes.

(Testimony of Robert A. Holderby.)

Q. And they have permanent members on the crew of heavy equipment? A. Yes.

Q. You never got a job in your life like that, isn't that true? [103] A. Yes.

Q. Isn't that true? A. Yes.

Q. That kind of work, those men that are on a steady crew are the experienced help, isn't that true, the men that do a good, solid, competent job, isn't that true? A. Yes.

Q. The longest that you ever were on a job was that Payne job that you were talking about?

A. No.

Q. What was that other?

A. Griffith Company.

Q. How long were you on that job?

A. I told you approximately two and a half months and I terminated on my own volition.

Q. That was when?

A. That was in September, latter part of September of '52.

Q. What was the very last job that you held since before this hearing?

A. The last job, I was with Osborne Company.

Q. What kind of work did you do there?

A. Rolling, grade rolling asphalt.

Q. How long did you last there?

A. The job termination, until they were out of work.

Q. How many days? [104]

A. Approximately five weeks.

Q. Five weeks?

(Testimony of Robert A. Holderby.)

A. Yes. Those were the people that were willing to give me a letter of recommendation to any other employer.

Q. Have they called you back to work, have you applied to them for work?

A. Have I applied to them again?

Q. Yes.

A. No, because the work was terminated.

Mr. Sokol: That is all.

The Witness: And the policy is that you don't solicit your own job specifically. That has been the policy and has been frowned upon very, very heavily by the union. [105]

* * * * *

Mr. Sokol: I'm ready to proceed on this case and close this case up tonight. I have very urgent business to attend to and if you have any other evidence you can stipulate, to word it factually, I will try to stipulate to it.

Mr. Grodsky: I can't word it factually. First of all, commerce——

Mr. Sokol: I will stipulate to that. I will stipulate the same testimony in that other case will apply to this case. [106]

* * * * *

HAROLD M. McNEEL

a witness recalled by the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Grodsky): You had better give your name again. A. H. M. McNeel.

Q. You are the same Mr. McNeel who testified yesterday? A. Yes.

Q. And this morning you and I were out at the office of Local No. 12, is that correct?

A. Correct.

Q. And in connection with that I went through certain records and I questioned your chief dispatcher? A. Correct.

Q. In your presence? A. Yes. [118]

Q. Now, the information obtained discloses that the old out-of-work lists are destroyed and they are not available. A. That is correct.

Q. The only out-of-work list available is the current list? A. Correct.

Q. And only one copy of the current list is available? A. That I don't know.

Q. If I told you that your chief dispatcher told me that she only has the one copy, would you agree that that was a fact?

Mr. Sokol: I think that is ridiculous.

Trial Examiner: I think that is ridiculous too.

Mr. Grodsky: All right. Well, I will withdraw the ridiculous question.

Q. (By Mr. Grodsky): Now, the current method

(Testimony of Harold M. McNeel.)

of obtaining out-of-work lists has been in effect since about the first of the year?

A. That is correct.

Q. And prior to that time, a number of lists were made out?

A. I don't know whether you mean a number of the same lists each week.

Q. A number of copies of each individual weekly list were made out? A. Correct.

Q. And one copy, at that time, was available for the [119] inspection of members in the hall?

A. That is correct.

Q. And other copies were distributed within your organization, is that correct?

A. Correct.

Q. That system has been superceded by the system which is presently followed?

A. That is correct.

Q. Also, prior to September 1 of this year a different system was used with reference to the maintenance of the records of persons out of work who are seeking employment, is that correct?

A. No, I don't—well, maybe I do understand the question. There has not been any change in the system.

Q. I said the system of the maintenance of the records.

A. Oh, yes, that has been changed.

Q. Now, prior to the 1st of September the names, or I should say, the cards of persons out of work and seeking employment through Local 12

(Testimony of Harold M. McNeel.)

were kept on the wheel, if those persons were members of Local 12 or if they were persons who were transferring in or if they were applicants who had made a payment on their initiation fee? Is that correct?

Mr. Sokol: Let us hear that question again.

Trial Examiner: Would you please read the question, Miss Reporter? [120]

(Question read.)

The Witness: All on one wheel, yes.

Q. (By Mr. Grodsky): But not on that wheel were the names of persons who had filled out information cards and who had not made any payment towards their initiation fees?

Mr. Sokol: I think he should be asked a specific question here. That is the trouble about questions like that. He answers the question and it doesn't make a good record. I think he should be asked specifically, did the men have to pay a fee to get on the wheel. Let us know the facts.

Mr. Grodsky: I will ask it that way.

Q. (By Mr. Grodsky): Did the men have to pay a fee in order to get on that wheel?

A. He did not absolutely have to pay any fee. It depended on his position, whether he was transferred in. If he was transferred in, he had naturally to pay a transfer fee, but it wasn't absolutely necessary.

You could get on that wheel without paying a dime until you went to work.

(Testimony of Harold M. McNeel.)

Mr. Sokol: That was a big surprise, any inclusions of that in there.

Mr. Grodsky: You are due for surprises or one of us is.

Q. (By Mr. Grodsky): I show you General Counsel's Exhibit No. 9 for identification and ask you if that is the information card of the type which persons who would first come in [121] and wish to apply to be put to work, would they fill out this type of a card?

A. It would depend on who the person was.

Q. It may be simpler if I will ask you what the card is and ask you what are the circumstances under which persons fill it out.

A. A man coming in seeking work is handed one of these cards. It isn't affiliated with the union.

Trial Examiner: Let me get it straight now. Say a man, who wanted to be an oiler or to do work in a classification that the engineers have, just came to town. He had no connection with the union whatsoever and he said, "I want a job".

Would such a man be handed this card?

The Witness: He would.

Trial Examiner: And asked to fill it up?

The Witness: He would.

Trial Examiner: Is he the only one who would be asked to fill out this card?

The Witness: Not necessarily.

Trial Examiner: Who else would be asked to fill out this card?

The Witness: Any one seeking work.

(Testimony of Harold M. McNeel.)

Trial Examiner: Whether he was a member or not?

The Witness: Oh, no, a member would not.

Trial Examiner: I am sorry, Mr. Grodsky.

Mr. Grodsky: It is all right.

Q. (By Mr. Grodsky): A person transferring in would be asked to fill that in?

A. Not necessarily. Sometimes they do, but not necessarily.

Q. Do you know Mr. Holderby was asked to fill one out after he had been suspended?

A. No.

Q. You don't know?

A. No, I don't know.

Q. Now, coming back to the question, before the 1st of September——

Trial Examiner: Is that September of this year?

Mr. Grodsky: Of 1954, that is correct.

Trial Examiner: Thank you.

Q. (By Mr. Grodsky): When a person came in and filled out an information card, and we are now talking about a person who has not been affiliated with this or any other union at any time, a new man, what was the method by which the information that he was available for employment was retained for the dispatcher?

A. Prior to September, it was maintained in a file.

Q. It wasn't maintained on the wheel where you listed some other persons who were seeking employment?

A. No. [123]

(Testimony of Harold M. McNeel.)

Q. And what was the practice with reference to seeking out these people for employment?

In other words, what did the dispatcher do?

A. You mean as far as these cards are concerned?

Q. Yes.

A. When there was a call for a job and there was no one who was capable of filling it, they came to the application card.

Q. And then they would notify that person about an opening?

A. Yes.

Q. And that person would have to come in and pick up a referral?

A. Yes.

Q. And at that time, that person would have to make application for admission to the union?

Mr. Sokol: That is leading and suggestive.

Trial Examiner: Oh, yes, but let us see what is the answer to that.

The Witness: Well, he would be cleared to the job and he would have, as the contract calls for, thirty days to become a member according to the contract.

Q. (By Mr. Grodsky): My question is what was the practice and I am not referring to the contract. I am referring to what was the practice.

Was the practice that he would have to make his application for membership at that time and would have to make a [124] payment on his initiation at that time?

A. I don't know.

Q. Isn't that what the chief dispatcher told us this morning?

(Testimony of Harold M. McNeel.)

A. It may have been when you were talking to her, but at that time there was another man talking to me.

Q. Not at that time. I was very specific about that, but if you do not remember that, we will have to get Cynthia down here to check up on that.

Mr. Sokol: She is just an office employee and bringing her down here wouldn't serve your purpose.

The Witness: I do know this, that it isn't absolutely necessary to do that. I know that men have been cleared without putting a dime down on it. I do know that.

Q. (By Mr. Grodsky): Well, would your office records in any way reflect that?

A. Certainly.

Q. Who would have charge of these office records?

A. You saw the membership wheel and the date of payment and what they paid for.

Q. Those are different wheels from the ones that we have been talking about?

A. Oh, yes, that is membership.

Q. Could you, by referring to those wheels, get specific examples of persons who have been cleared out without payment of dues, without payment of a fee? [125]

Mr. Sokol: Well, I am not going to ask my client to wade through years of that.

I want to say this for the record, that some misguided individual, contrary to the legal advice given

(Testimony of Harold M. McNeel.)

this labor organization, when someone came up for a job, to sign the application, when the policy of the union was to abide by the agreement that they were entitled to work for thirty days, supposing some misguided individual was opposed to it and the contractual relationship, the Board would not follow that rule that the error of someone in the union would bind the company.

Trial Examiner: I think he is entitled to answer the question.

The Witness: Could I have the question again, please?

Trial Examiner: Would you read the question, Miss Reporter?

(Question read.)

The Witness: Again I say I don't know how it could be answered. You would go through thousands of names to arrive at that.

Q. (By Mr. Grodsky): Well, Mr. McNeel, if that were a practice——

A. I didn't say it was a practice. I said it has been done.

Q. Well, then, let me ask you what is the practice? [126]

Is it the practice of the union to require the payment of the fees?

Trial Examiner: Why don't you stop with your first question, what is the practice?

Mr. Grodsky: All right.

The Witness: The practice is that they sign an

(Testimony of Harold M. McNeel.)

application, but they do not have to pay any money when they sign an application.

Trial Examiner: When you say, "an application," in this regard, you mean an application for membership?

The Witness: Yes. You should know.

Mr. Sokol: I suppose you directed that last remark to Mr. Holderby?

The Witness: Yes.

Trial Examiner: Let us proceed.

Q. (By Mr. Grodsky): I will show you General Counsel's Exhibit No. 10 and ask you if this was copied from Mr. Holderby's work record in the office this morning?

For your convenience, I have the record here.

Mr. Sokol: Well, if it was copied that will be all right.

Q. (By Mr. Grodsky): It was done by one of the girls in the office?

A. That is his record.

Mr. Sokol: Is that his record? [127]

The Witness: Yes.

Mr. Grodsky: I will now offer General Counsel's Exhibit No. 10 in evidence.

Mr. Sokol: No objection.

Trial Examiner: Incidentally, did you ever offer General Counsel's Exhibit No. 9?

Mr. Grodsky: I am sorry. If I did not, I am offering it at this time.

Trial Examiner: Any objection.

Mr. Sokol: No objection.

(Testimony of Harold M. McNeel.)

Trial Examiner: General Counsel's Exhibits Nos. 9 and 10 will be admitted.

(Thereupon the documents above referred to were marked General Counsel's Exhibits Nos. 9 and 10 respectively and were received in evidence.)

[See page 161 for Exhibit No. 10.]

Q. (By Mr. Grodsky): Now, I will show you this document which I am not going to have marked and ask you if you know what that is?

A. Yes, this is his work card.

Trial Examiner: Whose work card?

The Witness: Mr. Robert Holderby.

Q. (By Mr. Grodsky): And on this work there is a notation here.

Trial Examiner: Incidentally, Mr. McNeel, those are the original records of the union?

The Witness: They are. That is the card that is kept in [128] the dispatching office and a complete record is kept of each member.

Q. (By Mr. Grodsky): Now, I will ask you if you can read this notation into the record.

Mr. Sokol: Which one is that?

Mr. Grodsky: 6-9-53.

Q. (By Mr. Grodsky): Will you read that out loud, please?

Mr. Sokol: I will read it. "6-9-53. Per Carroll. Money refunded no longer a member to be cleared."

Mr. Grodsky: "No longer a member."

Mr. Sokol: Then next, "to be cleared". Well, ask him what it means. I know exactly.

(Testimony of Harold M. McNeel.)

Mr. Grodsky: Just a minute now. There is no period after the word "member".

Just look at it, Mr. Trial Examiner.

Trial Examiner: If you want me to take some information from that card and if it is a question as to whether there is a period in there or not, I want a photostatic copy of that in the record.

Mr. Grodsky: This is done in pencil and the photostatic copy doesn't show up clearly where it is in pencil.

I will ask the witness a question.

Q. (By Mr. Grodsky): Is there any period after the word "member"?

A. There is no period but that isn't what it means. [129]

Q. The next word after the word "member" is the word "to", is that correct? A. Yes.

Mr. Sokol: I want the Trial Examiner to state for the record how that is written and whether or not the words "to be cleared" are on a separate line.

Trial Examiner: All right, I will do it. As I read this, Mr. McNeel, you follow me.

The matter which I am going to read appears to be in pencil and it starts out on one line, "6-9-53 per Carroll."

The next line reads, "Money refunded".

The next line reads, "No longer a member".

The next line reads, "to be cleared."

Then the next notation seems to be a notation regarding 6-25-53, which reads, "to be kept on," on the first line.

(Testimony of Harold M. McNeel.)

And on the second line are the words, "list per Mr. Bronson", as I read it. And then there is another notation down here, beginning, "7-8-53", which seems to be a referral to a job or something. At least, it has nothing to do with this present controversy.

I trust that everybody is satisfied.

Mr. Sokol: Thank you very much.

Mr. Grodsky: I have just one more question which I have been trying to ask patiently.

Q. (By Mr. Grodsky): In the phrase "to be cleared", does [130] the word "to" start with a capital "T" or a small "t"?

A. It should start with a capital "T".

Q. I ask you to look at this and tell me whether it starts with a capital "T" or a small "t".

A. I don't know.

Trial Examiner: Let us not hedge around here.

That is a small "t" is it not, Mr. McNeel? At least, that is the way I see it.

Mr. Sokol: You know the poet, E. E. Cummings is starting his sentences with small letters and I believe if the poet were writing that, he would be starting the beginning of a sentence with a small "t".

The Witness: That was the intention. He was to be cleared.

Trial Examiner: Well, let us get back as to whether that was a small "t" or a capital "T".

The Witness: I would say it could be.

Trial Examiner: It could be what?

(Testimony of Harold M. McNeel.)

The Witness: Well, some people make capitals that way, but that was the intention.

Trial Examiner: Mr. Grodsky, I think in view of the witness' answer, you had better have that card photostated.

Mr. Sokol: Now, wait a minute. Personally to me, it looks like a small "t".

Trial Examiner: Thank you, Mr. Sokol. [131]

Mr. Sokol: But all this is much ado about nothing.

Trial Examiner: I agree about that.

Q. (By Mr. Grodsky): Now, at my direction, did your chief dispatcher withdraw the cards of those members, those employees, who have been referred according to your out-of-work list from your current out-of-work list for the job of oiler this week? A. Yes.

Q. And I am holding now in my hand all those cards which are five in number, is that correct?

A. Correct.

Q. I have here the card of Joe Liveringhouse, and I will ask you if this is correct, that on 8-20-54 he was referred out to a job for Kiewitt?

A. Yes.

Q. Is that Peter Kiewitt? A. Yes.

Q. That after he reported in on 10-11-54—and do you know what this notation means?

A. Called out.

Q. He was called out on 10-12-54——

Mr. Sokol: For what?

(Testimony of Harold M. McNeel.)

Mr. Grodsky: Well, at 2:15 p.m. he was called out but he wasn't present.

Mr. Sokol: Oh. [132]

Q. (By Mr. Grodsky): At 10-14-54 he was called twice and the notation there is "NA".

A. That means not at home.

Q. At 10-15-54 he was called twice?

A. Yes.

Q. And at 10-16, he reported for a job at J. Dolfman? A. Yes.

Q. I have here the card of John Polsky and his record for the same period substantially shows that on August 24, 1954, he was referred to Bechtel Corporation.

On 9-16-54 he reported in that he was no longer working. At 10 a.m.—well, is that correct?

A. That is what it says, yes.

Q. The next notation is "10-8-54, L.W." which means "left work"? A. Yes.

Q. At 10-8-54 he was referred to Sweger Kirshman, oiler, 10-13-54, and there is a notation here "R.I. three days", which means he had worked three days? A. Yes.

Q. And under your rules since he had worked three days he goes back to his same place on the list? A. That is right.

Q. And from 10-16-54 he was sent out to Dewey Reser, is that right? [133] A. Yes.

Q. In order to make the record perfectly clear, the chief dispatcher told me that he was specifically

(Testimony of Harold M. McNeel.)

requested by Dewer Reser, for whom he has worked before according to his record.

Under your practice, if he was specifically requested by the employer, he would be sent out under these circumstances, would he? A. He would.

Q. I have here the card of E. A. Tucker and it shows that on July 21st he was referred out as an oiler, that he afterwards reported in on September 27th, is that right? A. Yes.

Q. And that he was referred out on September 30, 1954, to Izzie Construction as an oiler?

A. Yes.

Q. And then it says, "two days back on list."

A. That is right.

Q. He then was referred out on 10-11-54 to Floyd Welt but then it says, "did not take job, back on list", and then on 10-15 he was referred out to Robert E. McKee, oiler, on "B.C."

What does "B.C." mean, do you know?

A. I don't know.

Q. Any way, oiler on B.C.? [134]

A. Yes.

Q. The next card I have here is Warren W. Breece, who is an oiler and his card shows that he was on the list as of 9-3-54.

Trial Examiner: On what list?

Mr. Grodsky: On the out-of-work list.

Trial Examiner: Oh, all right.

Q. (By Mr. Grodsky): I am correct on that?

A. Yes.

Q. And on 9-8-54 it says, "3 p.m. NH", which

(Testimony of Harold M. McNeel.)

means "not at home", and then it says, "Moved, send card", and there is a check mark after that?

A. Yes, they send a card to them if they cannot get them on the phone.

Q. They send them a card to keep in touch with them? A. Yes.

Q. Then there is 9-24, and another notation of the same sort. 9-27 he was referred out to McDonald & Kruse and 10-1 he reported in.

10-4, "contractor reports inebriated", and 10-11 he reported in.

10-14 he was referred out to Mat Zeich as an oiler, is that correct? A. That is right.

Q. The next card is Lee Armstrong and he was sent out on [135] September 8 to Ansco Concrete Setting. He reported back in on September 25 and there are a number of notifications of efforts to get in touch with him on different dates, one, two, three, four, five, six.

And then on 10-11 there is a notation "Sent card"? A. Yes.

Q. And then on 10-13 he reported in at 8 a.m.; is that correct? A. Yes.

Q. And 10-16 he was sent out to Bechtel Corporation, is that correct? A. Yes.

Q. These are the original records which I have been reading to you? A. Yes.

Mr. Sokol: You do not want a photostatic copy now, do you?

Trial Examiner: No, we do not require that now.

Mr. Sokol: Can we have a five minute recess?

(Testimony of Harold M. McNeel.)

Trial Examiner: We will have a recess.

(Short recess.)

Trial Examiner: I will call the hearing to order, please.

Any further questions of Mr. McNeel?

Mr. Sokol: No questions. [136]

Mr. Grodsky: Just a second. I may have some here. I have one further question that I do not think has been asked.

Q. (By Mr. Grodsky): Getting back to before September 1 of 1954, on your out-of-work list, when a person would fill out an information card and he wasn't a member, he had not paid in any money or anything else, his card was in a file, is that correct? A. That is correct.

Q. Now, if a person who was a member reported out of work, he would be put on the out-of-work list, is that correct? A. That is correct.

Q. And he would have to be considered for dispatching before the man whose name was on the file, is that right?

A. Depending on the classification.

Q. I am talking about the same classification.

A. Yes, the same classification.

Mr. Grodsky: No further questions.

Trial Examiner: Anything from you, Mr. Sokol.

Cross Examination

Q. (By Mr. Sokol): The non-members, were they persons who had never worked as far as you know in the multiple employer unit?

(Testimony of Harold M. McNeel.)

A. I don't know that any of them had.

Q. You first dispatched the people under the contract, those that worked in the multiple employer unit within the [137] period?

A. That is correct.

Mr. Grodsky: I will object to that. That isn't what the testimony of the witness has been. There has been no evidence here. There has not been any evidence on the multiple employer unit.

Mr. Sokol: You have not been listening.

Trial Examiner: Oh, to the contrary. I will overrule the objection.

Mr. Sokol: I think there was an answer, Miss Reporter, will you please read it to me?

(Answer read.)

Trial Examiner: Anything further?

Mr. Sokol: Nothing further.

Q. (By Trial Examiner): Mr. McNeel, these cards you have produced here are application cards which are in the original records? These cards are three by five inches and are the original records of the union? A. Yes.

Q. They have a hole in them and apparently they go on some kind of a frame?

A. A wheel they call it.

Q. And on each one of these cards, the man's name appears, his social security number,—I suppose that is what is above his name? [138]

A. Yes.

Q. And then there are his various and sundry

(Testimony of Harold M. McNeel.)

occupational classifications, also typed, to the right of his name? A. Correct.

Q. Some of those I see are typed and then on occasions you find some where a classification is written in, in pencil? A. Yes.

Q. Such as on Mr. Holderby's card. There is the pencil notation, "screed * * *" and something or other. A. Yes, something or other.

Q. I cannot make it out, but any way, that is in pencil while the rest of his occupational competency is in typewriting? A. Yes.

Q. Now I notice that the cards which were read from by counsel for the General Counsel are those cards, but on Mr. Holderby's card we have a color scheme at the bottom of the card, made up of various and sundry tabs of different colors.

A. Yes.

Q. There are, incidentally, four different colored tabs, as I see it. A. Yes.

Q. Can you tell me what those color tabs are?

A. This green one indicates tractor doser or it could also mean, in some instances, heavy duty repairman. [139]

The dark green one means cat. And the light green one, I am not too sure, but I think that means A-frame.

Q. And the orange one?

A. That means roller screed operator.

We have six different colors and they put on the colors in order to help the dispatcher in going through the cards.

(Testimony of Harold M. McNeel.)

Q. With your oilers then, I gather that all the five men whose job classifications were read, or jobs were read, were all oilers?

A. Yes, but we do not tab oilers.

Q. Well, here is one who is a fireman.

A. Yes, fireman oiler.

Q. Now, getting back to Mr. Holderby's card, again, you have still got one tab to go. Would you tell me what that other tab is?

A. These tabs are just to make it easy to pick it off the wheel.

Mr. Sokol: A lifting tab.

The Witness: Yes.

Trial Examiner: Well, have I brought up anything that any one wants to inquire about?

Mr. Grodsky: Yes, I have something.

Redirect Examination

Q. (By Mr. Grodsky): Does Mr. Holderby's card indicate the word "tugger" on it in pencil as a classification? [140] A. No, not in pencil.

Q. "Tugger" is typed in? A. Yes.

Q. Secondly, those tabs only appear where a person has journeyman classifications, is that right?

A. Not necessarily, no. The only ones that we do not have tabs for are the apprentices and oilers.

Q. Is there any category between an apprentice and an oiler and a journeyman?

A. Oh, yes.

Q. Well, what for example?

A. You mean the difference between them?

(Testimony of Harold M. McNeel.)

Q. No. You said that you do not have tabs for apprentices or oilers? A. That is right.

Q. Then it stands to reason that the only cards which are tabbed are those of journeymen?

A. That is right.

Q. Well, this would indicate, according to the records of your organization, that Mr. Holderby has journeyman qualifications?

A. That is right.

Mr. Grodsky: No further questions.

Recross Examination

Q. (By Mr. Sokol): Did you check that Payne job that he was [141] on in June of 1953?

A. He said he was on the job fifteen days and the record shows something else.

Q. What does the record show?

Mr. Grodsky: I cannot find it on the record.

Mr. Sokol: Was it not on the record? It was in June of 1953, was it not?

Trial Examiner: Let us go off the record while we find it.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Sokol: On the second page of Board's Exhibit No. 8 where it says, "6-9-53, R.I. reported in". That doesn't conform with the original record, that on 6-9-53 it says, and it has been previously referred to, "Per Carroll. Money refunded no longer a member" and then, "to be cleared."

That covers it.

(Testimony of Harold M. McNeel.)

Trial Examiner: All right. Is that satisfactory to you, Mr. Grodsky?

Mr. Grodsky: That is satisfactory to me, yes.

No further questions.

Trial Examiner: Anything further, Mr. Sokol?

Mr. Sokol: No.

Trial Examiner: Thank you very much, Mr. McNeel.

(Witness excused.) [142]

Mr. Grodsky: Mr. Holderby, will you take the witness stand?

Trial Examiner: All right, Mr. Holderby, you have been already sworn.

ROBERT A. HOLDERBY

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Grodsky): Mr. Holderby, I show you General Counsel's Exhibit No. 10, which is a continuation of the union record from your work card to date.

I will show you specifically a notation, "4-9-54" and after that there appear the words, "wants to oil".

Now, I will ask you if you recall any conversation which you had which led to that notation?

A. I cannot remember any conversation pertaining to that notation.

(Testimony of Robert A. Holderby.)

If I may, I would like to state——

Mr. Sokol: He has answered the question. [143]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 2

STANDARD FORM AGREEMENT

This Agreement is entered into this.....day of, 19.., by and between the undersigned, herein referred to as the "Employer", and the International Union of Operating Engineers, Local Union No. 12, herein referred to as the "Union".

Article I—Coverage

A. This Agreement shall apply to and cover all workmen of the Employer in the classifications set forth in Appendix "A", employed to perform or performing construction work, including but not limited to building construction, heavy, highway, and engineering construction, and field survey work. It shall also include all maintenance and repair work in the Employer's permanent yards and shops and field repair, in Southern California, more particularly described as the counties of Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.

B. All work performed in the Employer's warehouses, shops and yards, which have been particularly provided or set up to handle work in connection with a job or project covered by the terms of

this Agreement, and all of the production or fabrication of materials by the Employer, or sub-contractor, for use on the project, shall be subject to the terms and conditions of this Agreement.

C. All work performed by the Employer, and all services rendered for the Employer, as herein defined, by the workmen, shall be rendered in accordance with each and all of the terms and provisions hereof.

D. If the Employer, party hereto, shall sub-contract work, as defined herein, provision shall be made in such sub-contract for the observance of the terms of this Agreement by said sub-contractor. A sub-contractor is defined as any person, firm or corporation who agrees, under contract with the general contractor or his sub-contractor, to perform on the job site any part or portion of the work covered by the contract, including the operation of equipment, performance of labor, and the furnishing and installation of materials.

E. The loading and unloading of equipment which is operated by workmen covered by this Agreement or the transportation of such equipment by means of its own power, shall be performed by workmen covered by this Agreement. Nothing herein contained shall be construed to prohibit the normal delivery of freight by common carrier.

Article II—Union Recognition

A. The Employer hereby recognizes the Union as the sole and exclusive collective bargaining representative of all employees of the Employer over

whom the Union has jurisdiction, as such jurisdiction is defined by the Building and Construction Trades Department of the American Federation of Labor, as of the date of this Agreement.

Subject to this understanding, the Employer shall have entire freedom of selectivity in hiring and may discharge any workman for any cause which he may deem sufficient, provided there shall be no discrimination on the part of the Employer against any workman, nor shall any such workman be discharged by reason of any Union activity not interfering with the proper performance of his work.

It is the intention of the parties that all workmen covered hereby shall be, or become forthwith upon employment, and remain continuously, members in good standing of the Union as a condition of employment. This provision shall become operative without further notice or amendment whenever amendments to, or judicial interpretations of, the Labor-Management Relations Act of 1947 remove the inhibitions against the application of this paragraph now existing under the present wording and judicial interpretations of that Act.

It is agreed that all workmen covered hereby shall be, or become, not more than thirty (30) days after employment, and remain continuously, members in good standing of the Union and shall remain available for work as a condition of employment.

B. In the employment of workmen for all work covered by this Agreement in the territory as de-

scribed in Article I, Paragraph A, the following provisions, subject to the conditions of Article II-A, above, shall govern:

1. The Union shall establish and maintain an open and non-discriminatory employment list for employment of workmen in the jurisdiction of the Union.

The Employer shall first call upon the Union, or its agent, for such men as he may from time to time need, and the Union, or its agent, shall immediately furnish to the Employer the required number of qualified and competent workmen of the classifications needed by the Employer.

The Union, or its agent, will furnish each such required competent workman entered on its list, to the Employer, by use of a written referral, and will furnish such workmen from the Union's listing in the following manner:

(a) Workmen who have been recently laid off or terminated by the Employer now desiring to re-employ the same workmen in that same area, provided they are available for employment.

(b) Workmen who have been employed by the Employer in the jurisdiction within the multiple-employer unit, covered by this Agreement and the AGC-BCA-AFL Southern California Master Labor Agreement, during the previous ten (10) years, and are available for employment.

(c) Workmen whose names are entered on the list of the Union and who are available for employment.

Reasonable advance notice, but not less than

twenty-four (24) hours prior to the required reporting time, shall be given by the Employer to the Union, or its agent, upon ordering such workmen; and, in the event that forty-eight (48) hours after such notice, the Union, or its agent, shall not furnish such workmen, the Employer may procure workmen from any other source or sources. If men are so employed, the Employer will immediately report to the Union, or its agent, each such workman by name.

Workmen employed by the Employer for a period of thirty-one (31) days continuously or accumulatively within the multiple-employer unit, covered by this Agreement and the AGC-BCA-AFL Southern California Master Labor Agreement, and procured in accordance with Article II, B-1 (c), above, or from other sources by the Employer himself, shall become members of the Union immediately, upon terms and qualifications not more burdensome than those applicable at such time to other applicants to the Union.

2. The Union will maintain District dispatching offices in the following cities, to provide service to the Employer:

District office: Los Angeles—Territory covered: Los Angeles County, except the Long Beach Area.

District office: Ventura—Territory covered: Ventura, Santa Barbara and San Luis Obispo Counties.

District office: Bakersfield—Territory covered: Kern, Inyo and Mono Counties.

District office: San Diego—Territory covered: San Diego and Imperial Counties.

District office: San Bernardino—Territory covered: San Bernardino and Riverside Counties.

District office: Long Beach; Territory covered: Orange County and the Long Beach Area of Los Angeles County.

When the Employer desires to transfer workmen from one District to another, he shall notify (by telephone or otherwise) the District Office in the District where the men are employed. The District Office which includes the area where the men are to be employed, will issue new referrals.

Workmen employed by the Employer pursuant to the terms of this Agreement and remaining in good standing in the Union, shall not be removed or transferred by the Union unless the prior approval of the Employer involved is obtained.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 3

The Constitution Governing the International Union of Operating Engineers and all Subdivisions, Bodies, Local Unions and Members Thereof

* * * * *

Minimum Dues Required

Art. XV. Section 3(d). Each Local Union issuing or required to issue the temporary permits described in this Article shall charge to and collect from those members within its territorial jurisdiction, to whom this Article shall apply, minimum weekly permit dues of \$2 in the case of each hoist-

ing and portable engineer and minimum monthly permit dues of \$2 in the case of each stationary engineer, and shall thereupon issue to each such member the Journeymen Engineer's Temporary Permit provided.

Permits Required by Applicants

Art. XV. Section 3(e). Each Local Union permitting its applicants for membership to engage at the craft, upon work under contract with, or control of, said Local Union, shall charge to and collect from each such applicant, and each such applicant shall be required to pay to it for the period involved, minimum weekly permit dues of \$2 in the case of each applicant hoisting and portable engineer or apprentice, and minimum monthly permit dues of \$2 in the case of each applicant stationary engineer or apprentice, and shall thereupon issue to each such applicant a temporary permit similar to the Journeyman Engineer's Temporary Permit provided in this Article.

* * * * *

Art. XV. Section 3(h). The General Executive Board is authorized and empowered to establish, amend, alter, and administer the terms, conditions, and rates under which the temporary permits herein provided shall be issued and enforced. No temporary permit as described in this article shall be issued to or used by any person who is not, at the time, either a member of the International Union of Operating Engineers or an applicant for membership therein and the attempted issuance of such

a permit above referred to by any officer or employe of the organization to any other person than those described herein shall be unauthorized, null and void.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 4

By-Laws Local Union No. 12, International Union
of Operating Engineers

* * * * *

Article II—Duties of Members

Section 1. In addition to the duties required by the Constitution and Ritual, every member will be required to conform to and abide by the hours, wages and conditions of employment provided for in the trade rules of Local Union No. 12, 12-A, 12-B, 12-C and 12-D, or as negotiated under signed agreements with this Local Union. Any member found guilty of entering into an individual or personal contract or agreement with his Employer, which serves to lower the wages, hours or conditions of employment established by this Local Union will be subject to disciplinary action in accordance with the provisions of Article XXV, Section (2) of the International Constitution.

Section 2. No member shall engage in conduct discreditable to the organization nor be guilty of any of the following acts:

(1) Failing to observe and follow customary procedures and regulations concerning assignment to

work, transfer of work, or reporting on 'out-of-work' list.

(2) Intoxication on the job.

(3) Wilfully damaging machinery or equipment.

(4) Leaving job without giving due notification to employer and union.

(5) Leaving equipment while in operation during working hours without being properly relieved.

(6) Engaging in unauthorized meetings or aiding in the formation of secret cliques among the members.

(7) Refusing to comply with lawful orders of business agents or officers of the Local Union.

(8) Accepting employment without the proper job clearance.

(9) Refusing to show dues book or receipts when requested to do so by business agent or job steward.

(10) Failing to report to Local Union concerning the employment on jobs of non-members or members in bad standing.

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 8

[Letterhead of International Union of Operating
Engineers]

Working Record for Robert A. Holderby
From 9-29-51 to 8-20-53

9-20-51—Oswald Bros. (Screed 10-1-51)

10- 5-51—R. I. [Reported In*]

10- 6-51—Schroeder & Co. (Screed 10-8-51)

10-22-51—R. I. [Reported In*]

* Written in longhand.

- 10-23-51—Hickey-Kahn (Roller-Grade-Fired)
- 11-21-51—R. I. [Reported In*]
- 11- -51—McClain Const. (Tandem Roller)
- 11-30-51—R. I. (Back on List) [Reported In*]
- 12-11-51—Appl. Forfeited
- 3-31-52—Vernon Paving (Barber Green Spreader)
- 4- 7-52—R. I. [Reported In*]
- 5- 3-52—N. A. [No Answer*]
- 5- 9-52—N. A. [No Answer*]
- 5-20-52—Sent Card
- 7- 7-52—R. I. [Reported In*]
- 7-14-52—Webb & White (D-8 Tractor)
- 7-14-52—Winston Bros. (D-8 Sheepsfoot)
- 7-16-52—Cannot Opr. Cat.
- 7-28-52—Spann & Kenton (Roller)
- 7-29-52—R. I. [Reported In*]
- 7-29-52—Griffith Co. (Roller)
- 8- 5-52—Spann & Kenton (Hot Roller Opr.-
Tandem)
- 8- 8-52—Oswald (Barber Green Spreader)
- 8-11-52—R.I. No. Job [Reported In*]
- 8-11-52—Griffith Co. (Barber Green Spreader)
- 9-20-52—R. I. [Reported In*]
- 9-20-52—Ellis Const. (Roller Opr.)
- 9-24-52—R. I. [Reported In*]
- 9-25-52—Bongiovianni (Oiler)
- 9-27-52—Back on List
- 9-29-52—Vernon Paving (Hot Stuff Roller)
- 10- 1-52—S. W. Paving (Roller Opr.)
- 11-25-52—R. I. [Reported In*]

* Written in longhand.

- 11-25-52—G. J. Payne (Roller Opr.) I Day Job
11-29-52—Back on List
12- 8-52—Jerry Artukovich (Oil on Trencher)
2- 3-53—R. I. [Reported In*]
2-12-53—C. O. [Called office*]
2-16-53—C. G. Willis (D-4 Tractor Opr.)
2-26-53—R. I. 2:30 P. M. [Reported In*]
3-10-53—2:20 P.M. Cannot Work for So. West
Paving—Sick
3-11-53—4:10 P.M. C. O. [Called Office*]
3-12-53—City Rock Co. (One Day) Screed.
3-16-53—Back on List—1:35 P.M.
3-16-53—E. A. Irish (Oil on Trencher)
3-20-53—1:35 P.M. C. O. [Called Office*]
3-23-53—Pacific Iron & Steel (A-Frame Opr.)
3-30-53—R. I. Back on List [Reported In*]
3-30-53—Lipsett Steel—(A-Frame)
4- -8-53—4:10 P.M. N. H. L. M. (Contractor says
man hasn't shown up for three days.
Left him in bind—Called his home
and woman reports sick.)
4-13-53—R. I. 12:45 P.M. [Reported In*]
4-17-53—Sully Miller (Screed Opr.)
4-19-53—R. I. [Reported In*]
4-24-53—Schroeder Co. (Barber Green Asphalt
Spreader)
4-29-53—R. I. [Reported In*]
4-30-53—C. G. Willis & Son (D-8 Cat & Carryall)
5- 6-53—R. I. [Reported In*]

* Written in longhand.

- 5- 6-53—N. H. 3:50 P.M. [Not Home*]
- 5- 8-53—R. & J. Artukovich (Oiler on Trencher)
- 5-14-53—R. I. 1:15 P.M. [Reported In*]
- 5-14-53—Chas. Rounds (Oiler on Model 95 N. W.)
- 5-19-53—R. I. 12:45 P.M. [Reported In*]
- 5-19-53—So. West Paving (Screed Opr.)
- 5-27-53—Osborne Co. (Barber Green Spreader-
Paving Spreader)
- 5-28-53—Back on List (One Day Job)
- 5-29-53—Atlantic Const. (D-S Cat & Pulling
Sheepsfoot)
- 6- 4-53—R. I. 3:15 P.M. [Reported In*]
- 6- 5-53—NHLM-2:00 P.M. (City Rock-Hot Stuff
Roller) [Not home left message*]
- 6- 8-53—Job Cancelled—NA, NA, NA, NA, NA
[No answer*]
- 6- 9-53—8:05 A.M. NA. [No answer*]
- 6- 9-53—C. J. Payne (Roller Opr.)
- 6- 9-53—R. I. [Reported In*]
- 7- 8-53—R. A. Watson (Oil on N. W. Crane)
- 7- 9-53—Job Cancelled (Contractor contacting
Holderby)
- 7-14-53—R. I. [Reported In*]
- 8- 8-53—NHLM. [Not home, left message*]
- 8-20-53—NHLM. [Not home, left message*]
- 8-20-53—Co. 2:30 P.M. [Called office*]

* Written in longhand.

GENERAL COUNSEL'S EXHIBIT No. 10

Robert Holderby No. 557-28-7861

8-20-53—Ca 2:30

4- 6-54—Ca Wanted booth ph. no.

4- 8-54—Gave new phone no.

4- 9-54—Wants to oil

5- 4-54—Checked phone no.

5-20-54—8:50 a.m. By.

5-24-54—By. 10:15 a.m.

5-24-54—In hall no. transp.

6- 3-54—Job on Barber Green

Too. far 1:30 p.m.

6- 3-54—Ball & Harms (W. Wheel 10 oper)

6-14-54—R. I. 8:05 a.m.

6-14-54—Gone new ph. no.

6-16-54—Ca gave new phone no.

6-16-54—Ca. 4:30 p.m.

6-18-54—Ca. 10:10 a.m.

6-18-54—Ca

6-18-54—Macco (Monitaowac oiler)

7-14-54—R. I. 2:30 P. M.

7-22-54—McDonald & Kruze

7-22-54—Ca 12:40 pm

8-13-54—R. I. 2:00 p.m.

8-16-54—Gave new phone no.

8-19-54—Schroeder Co. (Screed Opr.)

8-24-54—R.I.

8-24-54—Refused concrete finishing job. Too far

8-26-54—Ca. 12:00

8-26-54—Osborne—Roller Oper.

9-28-54—R. I. 12:25 P.M.

10- 7-54—In hall 2:30 p.m.

10-11-54—In Hall

In the United States Court of Appeals
for the Ninth Circuit

No. 15003

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL No. 12, AFL,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, “International Union of Operating Engineers, Local No. 12, AFL, and Robert A. Hold-erby, An Individual,” Case No. 21-CB-564; “International Union of Operating Engineers, Local No. 12, AFL, and Frederick R. Hummel, An Individual,” Case No. 21-CB-536; and “International Union of Operating Engineers, Local No. 12, AFL, and Hoyt Covert, An Individual,” Case No. 21-CB-586 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was en-

tered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony of William E. Coombs taken before Trial Examiner Maurice M. Miller on September 29, 1954 in Case No. 21-CB-548, made a part of the record by stipulation of the parties (see transcript of testimony, page 147 in Case Nos. 21-CB-564, 21-CB-536 and 21-CB-586). (Annexed ot item 2 herein).

2. Stenographic transcript of testimony taken before Trial Examiner Thomas S. Wilson on October 18 and 19, 1954, together with all exhibits introduced in evidence.

3. Copy of Trial Examiner's Intermediate Report (annexed to item 5 hereof) and order transferring cases to the Board, both issued December 14, 1954, together with affidavit of service and United States Post Office return receipts thereof.

4. General Counsel's exceptions to the Intermediate Report received by the Board on **January 27, 1955.**

5. Copy of Decision and Order issued by the National Labor Relations Board on August 15, 1955, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary

of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 20th day of January, 1956.

[Seal] /s/ FRANK M. KLEILER,
 Executive Secretary, National
 Labor Relations Board

[Endorsed]: No. 15003. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. International Union of Operating Engineers, Local No. 12, AFL, Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed: January 23, 1956.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
 the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15003

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL No. 12, AFL,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, International Union of Operating Engineers, Local No. 12, AFL, its officers, agents, successors, or assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "International Union of Operating Engineers, Local No. 12, AFL and Robert A. Hold-erby, An Individual," Case No. 21-CB-564; "International Union of Operating Engineers, Local No. 12, AFL and Frederick R. Hummel, An Individual," Case No. 21-CB-536; and "International

Union of Operating Engineers, Local No. 12, AFL and Hoyt Covert, An Individual," Case No. 21-CB-586.

In support of this petition the Board respectfully shows:

(1) Respondent is a labor organization engaged in promoting and protecting the interest of its members in the State of California, within this judicial circuit where the unfair labor practice occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on August 15, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, International Union of Operating Engineers, Local No. 12, AFL, its officers, agents, successors, or assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the consolidated proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition

and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors, or assigns to comply therewith.

Dated at Washington, D. C., this 20th day of January, 1956.

NATIONAL LABOR RELATIONS
BOARD

/s/ By MARCEL MALLET-PREVOST,
Assistant General Counsel

[Endorsed]: Filed January 23, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

BOARD'S STATEMENT OF POINT AND
DESIGNATION OF RECORD

I. Statement of Point Relied Upon

The Board properly determined that respondent's discriminatory operation of its dispatch system and its denial of job referrals to Robert A. Hold-erby constituted violations of Section 8 (b) (1) (A) and (2) of the National Labor Relations Act, as amended.

II. Designation of Parts of the Record to be
Printed

1. The petition for enforcement.
2. The decision and order of the Board including the Trial Examiner's Intermediate Report.
3. The following portions of the stenographic transcript of hearing before the Trial Examiner:
Page 4 line 1 to page 4 line 17, page 8 line 20 to page 9 line 5, page 10 line 3 to page 39 line 25, page 50 line 17 to page 95 line 17, page 97 line 18 to page 98 line 9, page 98 line 20 to page 105 line 13, page 106 line 11 to page 106 line 18, page 118 line 9 to page 143 line 20.
4. The following exhibits of General Counsel to the extent indicated:
G. C. Ex. 2, but only Articles I and II thereof.
G. C. Ex. 3, but only Article XV, Secs. 3(d), (e), and (h).
G. C. Ex. 4, but only Article II, Secs. 1 and 2.
G. C. Ex. 8 in full.
G. C. Ex. 10 in full.

Dated at Washington, D. C., this 20th day of January, 1956.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board

[Endorsed]: Filed January 23, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER OF RESPONDENT, I. U. O. E.,
LOCAL No. 12, AFL

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now the International Union of Operating Engineers, Local No. 12, AFL, Respondent, for itself and no other, and files this its Answer to the Petition for Enforcement of an Order of the National Labor Relations Board, and denies, admits and alleges as follows:

I.

Answering Paragraph I of the Petition for Enforcement of the Order of The National Labor Relations Board, the respondent, International Union of Operating Engineers, Local No. 12, AFL, admits that respondent is a labor organization engaged in promoting and protecting the interests of its respective members in the State of California, and that it is within the judicial district of this honorable court, but denies that unfair labor practices involving this respondent occurred within this judicial circuit or within any other judicial circuit. Respondent International Union of Operating Engineers, Local No. 12, AFL, admits that this court has jurisdiction under Section 10-E of the National Labor Relations Act, as amended, to review purported orders of the National Labor Relations Board.

II.

Respondent International Union of Operating Engineers, Local No. 12, AFL, admits that on August 15, 1955, the National Labor Relations Board stated its Findings of Fact and Conclusions of Law and issued a purported order directed to respondent, its officers, representatives, agents, successors and assigns. Respondent International Union of Operating Engineers, Local No. 12, AFL, further admits that a copy of said decision and purported order was served upon respondent Union Local No. 12 on or about the same date.

III.

Respondent International Union of Operating Engineers, Local No. 12, AFL, for itself and no other, answering Paragraph III of the Petition of the National Labor Relations Board to enforce its order, states that it has no knowledge that the National Labor Relations Board is certifying and filing with this honorable court a transcript of the entire record of the consolidated proceedings before the Board, including the pleadings, testimony, evidence, Findings of Fact, Conclusions of Law, and the order of the Board sought to be enforced and, therefore, denies each and every allegation contained in said Paragraph III.

IV.

International Union of Operating Engineers, Local No. 12, AFL, further answering said Petition alleges that the said Findings of Fact and Con-

clusions of Law, referred to in Paragraphs II and III of the said Petition for Enforcement, are not based upon substantial evidence on the record considered as a whole and, therefore, are void and of no effect.

V.

Respondent further answering alleges that the purported order of the National Labor Relations Board here sought to be enforced is not based upon substantial evidence on the record considered as a whole and, therefore, is null and void and of no effect.

VI.

International Union of Operating Engineers, Local No. 12, AFL further answering said Petition for Enforcement alleges that the Findings and Conclusions of the Board that respondent violated Sections 8 (b) (2), 8 (b) (1) (A), Section 2 (6) and (7) are not supported by substantial evidence on the record considered as a whole.

VII.

International Union of Operating Engineers, Local No. 12, AFL further answering said Petition for Enforcement alleges that the National Labor Relations Board does not have jurisdiction to issue an order in the above entitled matter within the meaning of the National Labor Relations Act and, further, that it did not effectuate the policies of the Act or the Board to do so.

Wherefore, having fully answered the Petition for Enforcement of the National Labor Relations

Board, International Union of Operating Engineers, Local No. 12, AFL, a respondent herein, respectfully prays that the Petition for Enforcement of an order of the National Labor Relations Board be dismissed as to it and that said order of the National Labor Relations Board, with respect to respondent be fully set aside.

/s/ DAVID SOKOL,

Attorney for International Union of Operating Engineers, Local No. 12, AFL

Duly Verified.

[Endorsed]: Filed January 26, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

RESPONDENT'S STATEMENT OF POINTS

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

International Union of Operating Engineers, Local No. 12, AFL, respondent in the above-entitled proceeding, in conformity with the rules of this court, hereby states the following points upon which it intends to rely.

I.

The National Labor Relations Board is without jurisdiction over respondent and the subject matter herein involved.

II.

That the Board's Findings of Fact and Conclusions of Law that respondent International Union of Operating Engineers, Local No. 12, AFL, violated Sections 8 (b) (2), 8 (b) (1) (A) and 2 (6) and (7) of the National Labor Relations Act, as amended, are not supported by substantial evidence on the record considered as a whole and are contrary to law.

III.

That the National Labor Relations Act, as amended, deprives respondent of due process of law and is otherwise unconstitutional and void.

Respectfully submitted,

/s/ DAVID SOKOL,

Attorney for International Union of Operating Engineers, Local No. 12, AFL.

[Endorsed]: Filed January 26, 1956. Paul P. O'Brien, Clerk.

